

DEPARTMENT OF THE NAVY
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SECNAVINST 5815.3H
NCPB
5 October 1993

SECNAV INSTRUCTION 5815.3H

From: Secretary of the Navy
To: All Ships and Stations

Subj: DEPARTMENT OF THE NAVY
CLEMENCY AND PAROLE SYSTEMS

- Ref:**
- (a) 10 U.S.C. sec. 801-946 (UCMJ)
 - (b) 10 U.S.C. sec. 952 (Parole)
 - (c) 10 U.S.C. sec. 953 (Clemency)
 - (d) 10 U.S.C. sec. 954 (Retention)
 - (e) MANUAL FOR COURTS-MARTIAL (MCM)
 - (f) DODINST 1325.4 of 19 May 88 (NOTAL)
 - (g) SECNAVINST 5420.135D
 - (h) JAGINST 5800.7C (JAGMAN)
 - (i) SECNAVINST 1640.9A (CORRMAN)
 - (j) SECNAVINST 5300.28B (SUBSTANCE ABUSE)
 - (k) 18 U.S.C. secs. 4201ff (Federal Parole)
 - (l) 28 C.F.R. secs. 2.1-2.67 (U.S. Parole Commission Rules)
 - (m) SECODT ltr dated 19 Jul 76 (NOTAL)
 - (n) SECNAV ltr dated 21 Aug 76 (NOTAL)
 - (o) SECNAVINST 5800.11X (Draft) (Victim and Witness Assistance Program)
 - (p) Victims' Rights and Restitution Act of 1990 (Title 42, secs. 10601, 10601 note, 10606, 10606 note, 10607)
 - (q) SECNAVINST 5214.2B (Reports Management Program)
 - (r) SECNAVINST 5211.5D (Privacy Act)
 - (s) SECNAVINST 5720.5C (Freedom of Information Act (FOIA))
 - (t) SECNAVINST 5212.5C (Records Retention)
 - (u) SECNAVINST 5800.11 (Assistance to Crime Victims)
 - (v) SECNAVINST 1752.3 (Family Advocacy Program)
 - (w) OPNAVINST 1752.1 (Rape Victim Assistance)

1. Purpose. To publish regulations consistent with references (a) through (j) for implementation of

systems of clemency, parole, retention and enlistment of selected court-martialed offenders who were subject to the authority of the Secretary of the Navy at the time of their offenses.

2. Cancellation. SECNAVINST 5815.3G.

3. Background. References (a) through (d) provide the statutory authority for the Secretary of the Navy to establish systems for the remission and suspension of unexecuted portions of a courtmartial sentence, the restoration to duty, retention and enlistment of selected offenders, and a system of parole for offenders confined in military correctional facilities (naval brigs) who were under the authority of the Secretary of the Navy (SECNAV) at the time of the commission of their offenses. References (a) and (e) provide the maximum authorized punishments for offenses committed under the Uniform Code of Military Justice (UCMJ). Reference (f) provides that the purpose of clemency and parole review is to ensure uniformity and equality in the administration of justice and to guarantee that the best interests of society, military and civilian, and the individual are served. Neither statute nor long-standing practice effectively relied upon by the Congress requires that all clemency and parole decisions be made by SECNAV. Reference (g) vests authority in the Naval Clemency and Parole Board (NC&PB), an administrative activity within the Department of the Navy assigned to the Assistant SECNAV for Manpower and Reserve Affairs (ASN(M&RA)) to review cases eligible for clemency and parole and to take final departmental-level action or make recommendations in such matters in accordance with the provisions of this instruction. References (h), (k) and (l) provide guidelines for clemency and parole review by NC&PB, as applicable after taking into consideration the unique character of military service as set forth in the UCMJ and other published policy, rules and procedures of the Departments of Defense and Navy. This regulation also applies to members of the U.S. Coast Guard per references (m) and (n). Reference (o) is the primary directive on implementing reference (p). The draft provisions effecting the NC&PB have been incorporated in this instruction. Incorporation of the draft provisions will ensure that the goals established by reference (p) will be achieved throughout the Navy.

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4. Authority

a. The naval clemency and parole systems shall consist of review and decision-making procedures that include naval and civilian personnel, including various officers in the chain of administrative and judicial review, the NC&PB, the Director, Naval Council of Personnel Boards (NCPB), and the ASN(M&RA).

b. The NC&PB shall review the cases of selected offenders to determine whether to grant or deny clemency.

c. The NC&PB shall review cases of offenders confined in military or, when appropriate, federal confinement facilities, who are eligible for parole, to determine whether to grant or deny parole requests.

d. Clemency and parole actions taken pursuant to the policy, rules and procedures set forth herein are final.

e. Where this instruction conflicts with reference (g), this instruction controls.

5. Action. The NC&PB and the other elements within the clemency and parole systems shall carry out their responsibilities in accordance with this instruction.

6. Report and Forms

a. The report required by paragraph 302j is exempt from reports control by reference (q).

b. Forms required for clemency and parole review are listed in Appendix A.

7. Records. Contents of files created by the NC&PB shall be protected in accordance with reference (r). Written requests for disclosure of records within the possession or control of NC&PB shall be processed in accordance with the Privacy Act (PA) (5 U.S.C. sec. 552a) and the Freedom of Information Act (FOIA) (5 U.S.C. sec. 552) as implemented within the Department of the Navy by references (r) and (s). First-party; i.e., offenders, requests for disclosure of information will be

processed under both the PA and the FOIA regardless of how the request is styled by the requester (offender). (See paragraph 320.) Information released to any law enforcement agent under the "routine use" provision of reference (r) will indicate that such information is for law enforcement purposes only and is not to be released outside such agency. NC&PB records are retained in accordance with the provisions of reference (t).

8. Effective Date. The provisions of this instruction as they relate to the requirement for an approved sentence to include 12 months or more confinement before NC&PB is required to conduct a mandatory clemency review, the requirement for the offender to request clemency review in all other cases, and the procedures relating to the submission of such requests apply to cases in which sentences are adjudged by special and general courts-martial on or after 30 days from the date of the instruction's issuance. The remaining provisions of the instruction are effective upon the date of signature.

JOHN H. DALTON

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PART I

DEFINITIONS

101. **Clemency.** A general term for the NC&PB's administrative review or action, other than the correction of legal error, which results in mitigation, remission, or suspension of the whole or any part of the unexecuted portion of a court-martial sentence, restoration to duty, the voluntary retention on active duty beyond the obligated term of enlistment, or reenlistment. The naval clemency system, as governed by this instruction, is independent of any clemency review conducted by the court-martial convening authority, the officer exercising general court-martial jurisdiction over the offender, or higher officials acting pursuant to their authority under Article 74(a), UCMJ. It is therefore specifically independent of any clemency action taken by SECNAV under Article 74, UCMJ.

102. **Clemency Review Eligibility Date.** The date an offender is first eligible for clemency review by the NC&PB and then annually thereafter. The clemency review eligibility date is determined in accordance with the rules set forth in paragraph 403 of this instruction.

103. **Commanding Officer.** Generally, the officer in command of the military activity on whose rolls the offender is assigned at the time the offender's case is eligible for review by NC&PB. In the case of personnel serving sentences to confinement in naval brigs, the commanding officer considered an element of the clemency and parole review systems is the officer directly in charge of the brig. For the purposes of this instruction, the term "commanding officer" includes commanding officers and officers in charge of naval brigs, the Commandant, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, and any other officer who commands a correctional/confinement facility under the control of the armed services.

104. **Convening Authority.** The officer acting under Articles 22, 23, UCMJ, SECNAV (e.g., JAGMAN) or empowered by the President, who refers charges to trial by court-martial and who ordinarily takes action on findings and sentence after trial under the authority granted by Article 60, UCMJ, or the JAGMAN.

105. **Disposition Board.** An agent of the NC&PB established by each commanding officer of a naval brig to review and forward to the NC&PB recommendations via the commanding officer concerning clemency and parole requests of all offenders assigned to the naval brig.

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106. Director, Naval Council of Personnel Boards (NCPB). The Navy or Marine Corps officer overseeing and administering for SECNAV the clemency and parole systems under reference (g).

107. Federal Bureau of Prisons (FBOP). A federal system of confinement facilities to which selected court-martialed offenders are transferred from naval brigs for completion of service of their sentences to confinement imposed as a result of conviction by court-martial.

108. Incremental Parole. A probationary release from confinement from a naval brig for eligible offenders on an incremental basis of at least six consecutive 30-day periods under the guidance and supervision of a U.S. Probation Officer, the successful completion of which will normally result in NC&PB granting the offender parole until the offender's full term release date.

109. Mandatory Clemency Review. Unless waived in writing by the offender, the NC&PB must conduct a clemency review of all cases (except those involving the death penalty) involving offenders whose approved court-martial sentences include 12 months or more confinement.

110. Mitigation. Action taken to lessen the severity of the punishment in quantity or quality, or both, imposed by an approved court-martial sentence.

111. Naval Brig. A military correctional facility within the meaning of 10 U.S.C. section 951 used by the naval (Navy and Marine Corps) service for the confinement of offenders serving court-martial sentences. For purposes of this instruction, the U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, and any other correctional/confinement facility under the control of the armed services are included in the term naval brig.

112. Naval Clemency and Parole Board (NC&PB). A board composed of five senior (O-6 and O-5) officers of the Navy and Marine Corps and administratively constituted by SECNAV to take certain departmental-level actions in cases of offenders eligible for clemency and parole.

113. Offender. A member of the Marine Corps, Navy, or Coast Guard who has been convicted by special or general court-martial and has an approved sentence.

114. Officer Exercising General Court-Martial Jurisdiction (OEGCMJ). Any person authorized by Article 22a, UCMJ, SECNAV

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(e.g., JAGMAN) or empowered by the President to convene general courts-martial and to take supplementary actions required to finalize the court-martial of the offender, e.g., order the punitive separation executed because judicial review under Article 71(c), UCMJ, and clemency review under this instruction, have been completed.

115. **Parole.** A conditional release from confinement in a naval brig for an eligible offender after service of at least one-third of the approved sentence to confinement. Parole is granted for the purpose of assisting the selected offender, under the guidance and supervision of a U.S. Probation Officer, to make a successful transition from the controlled living environment in confinement to a normal life in the civilian community.

116. **Parole Eligibility Date.** The date an offender serving the confinement portion of an approved sentence is eligible for parole.

117. **Parole Management Unit (PMU).** Naval officers and civilian personnel under the supervision of the President, NC&PB, who administer the naval parole program for the NC&PB by acting as liaison with naval brigs, U.S. Probation Officers, and others necessary for the preparation, implementation and completion of parole programs for individually selected offenders paroled under the direction of the NC&PB.

118. **Parole Review Hearing.** A hearing conducted by the NC&PB to review parole requests, determine whether to grant or deny parole, set conditions of parole if parole is granted, grant or deny extensions of incremental parole or parole to full term release date, and make parole recommendations to SECNAV in those cases not within the final decision-making authority of NC&PB.

119. **Parole Revocation Hearing.** A hearing to determine whether the parolee has materially violated the conditions of release and, if so, whether the parole should be revoked or reinstated.

120. **Post-Trial Progress Report.** All favorable or unfavorable information, evaluations, and recommendations contained in the file of an offender who has a sentence adjudged by court-martial and approved by the convening authority that documents the offender's attitude, conduct, and performance since being convicted and upon which a decision regarding clemency and parole may be made.

121. **Preliminary Interview.** A proceeding generally conducted by a U.S. Probation Officer other than the offender's U.S. Probation

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Officer to determine whether probable cause exists to believe that the offender has materially violated a condition of parole and to provide a basis upon which to recommend to NC&PB whether a parole revocation hearing should be ordered.

122. **Prison Wardens.** Federal officials having cognizance over naval offenders who are serving court-martial sentences in facilities administered by the FBOP.

123. **Punitive Separation.** A dismissal, dishonorable discharge or bad conduct discharge adjudged as a sentence by a court-martial and approved by a convening authority.

124. **Remission.** The diminution, abatement, or forgiveness, in whole or in part, of any part of the unexecuted portion of an approved court-martial sentence.

125. **Requested Clemency Review.** A written statement or signed form (NAVSO 5815/1 (Rev. 8-80)), or equivalent, whereby an offender whose sentence includes an approved unsuspended punitive separation and less than 12 months confinement requests clemency from NC&PB.

126. **Restoration.** Action by which the approved punitive separation of selected offenders who request restoration is remitted or suspended for a definite period of time so that they may demonstrate by conduct and performance during a period of active duty that they deserve to have the suspended punitive separation remitted.

127. **Retention.** A clemency action by which selected offenders, who are beyond the expiration of their normal service obligation, are offered the opportunity to serve voluntarily a period of active duty beyond the expiration of their active service obligation on probation with a view to honorable restoration to duty.

128. **Supervised Releasee.** An offender, released from the FBOP at the mandatory release date after service of court-martial sentence to confinement, who is placed on mandatory supervision (release as if on parole) under the regulations of the FBOP and the U.S. Parole Commission.

129. **Suspension.** The temporary discontinuance, in whole or in part, of the service of the unexecuted portion of an approved court-martial sentence.

130. **U.S. Parole Commission.** An independent agency of the Department of Justice established under reference (k) with

authority to promulgate rules and regulations establishing guidelines for making decisions to grant or deny parole to federal prisoners. The guidelines issued by the commission, reference (1), serve as nonbinding guidelines for the NC&PB.

131. U.S. Probation Officer. Federal official of the Probation Division, Administrative Office of the United States Courts, having immediate supervisory cognizance over an offender paroled from a naval brig or a federal correctional facility.

132. Victim. A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the term includes one of the following, in order of precedence: a spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court or the Secretary of the Military Service.

133. Waiver of Clemency Review (WCR). A statement or form (NAVSO 5815/4 (5-81)), or equivalent, reflecting a voluntary, knowing and intelligent decision, signed by offenders and witnessed by a commissioned officer or the offender's lawyer, military or civilian, stating that despite the fact that their approved sentence entitles them to have NC&PB conduct a mandatory clemency review of their case, they waive that review.

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PART II

AUTHORITY

201. General Policy. This regulation implements the clemency and parole systems authorized by 10 U.S.C. sections 952-954. It must be read in a manner that is uniform and consistent with good order and discipline within the military as defined by the UCMJ (10 U.S.C. sec. 801-946), the Manual for Courts-Martial, other rules and procedures of the Departments of Defense and Navy and, where appropriate, enforced by corrections policy established by law and regulations implementing 10 U.S.C. sec. 951 (Military Correctional Facilities).

202. Statutory Authority. Title 10 U.S. Code sections 951-954.

a. 10 U.S.C. sec. 951 states in pertinent part:

(b) The Secretary concerned shall:

(2) provide for the education, training, rehabilitation, and welfare of offenders confined in a military correction facility of his department; and

(3) provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment. . . .

(c) Under regulations prescribed by the Secretary concerned, the officer in command shall have custody and control of offenders confined within the facility which he commands, and shall usefully employ those offenders as he considers best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

b. 10 U.S.C. sec. 952 states:

The Secretary concerned may provide a system of parole for offenders who are confined in military correctional facilities and who were at the time of commission of their offenses subject to the authority of that Secretary.

c. 10 U.S.C. sec. 953 states:

For offenders who were at the time of commission of their offenses subject to his authority and who merit such action, the Secretary concerned shall establish--

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(1) a system for the remission or suspension of the unexecuted part of the sentences of selected offenders;

(2) a system for restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended and who have not been discharged;

(3) a system for the enlistment of such offenders who have had the unexecuted part of their sentences remitted and who have been discharged.

d. 10 U.S.C. sec. 954 states:

The Secretary concerned may provide for persons who were subject to this authority at the time of commission of their offenses a system for retention of selected offenders beyond expiration of normal service obligation in order to voluntarily serve a period of probation with a view to honorable restoration to duty.

203. Regulatory Authority. This instruction must also be read in a manner that promotes uniformity and consistency of application of military justice as set forth in the MCM, the JAGMAN as well as the corrections policy set forth in references (f) and (i).

a. The general principles governing confinement of military personnel within the Department of Defense are, in pertinent part:

(1) Discipline should be administered on a corrective rather than a punitive basis, and military correction facilities should be administered on a uniform basis. It is desirable for persons under sentence of courts-martial or other military tribunals to be accorded uniform treatment, in furtherance of equality within the Department of Defense and in justice to individuals concerned.

(2) The Secretaries of the Military Departments shall:

. . . e. Provide programs for education, training, rehabilitation, and the welfare of military prisoners consistent with this Directive. . . .

b. The general policy governing confinement in the Department of the Navy is in part as follows:

[The] treatment of persons in naval confinement [will] be uniform and in full accord with the provisions of the UCMJ and

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that the major purpose of all awarded confinement be the correction of the members confined. It is also the policy of SECNAV that confined naval personnel retain all of the rights and responsibilities of other service personnel in a duty status except those which are expressly, or by implication, taken away under the provisions of the UCMJ and such regulations as may be promulgated by competent authority.

c. The Department of the Navy's correctional philosophy is set forth in SECNAVINST 1640.9A and includes a recognition of the fact that, whether it be confinement or some other form, punishment alone is seldom corrective. Confinement is punishment because it denies members their liberty and separates them from their families, friends, and most normal activities. It means loss of status and disapproval of the individual offender by the military society. Confinement sharply limits the prisoners' privileges, freedom of action, and opportunities for personal satisfaction. More significantly, it also lowers their self-respect.

204. Other Statutes and Regulations. The NC&PB will always be guided by statutory and regulatory requirements during the clemency and parole review process. The NC&PB will particularly keep itself informed of any programs that have as their purpose the protection of the individual and society from a recurrence of conduct that is either criminal or has a high probability of resulting in criminal conduct, and programs that have as their purpose the implementation of the rights of crime victims and services to crime victims. (See references (p) and (u) through (w). These programs may be required by statute or independently implemented within the Department of Defense and Department of the Navy by instruction or regulation. Upon becoming aware of a statutory or regulatory requirement that has as its purpose the government bearing responsibility for providing a service member the opportunity for treatment and rehabilitation of the underlying problem that has or may have caused or contributed to the criminal conduct for which an offender is eligible for clemency or parole review, the NC&PB will recommend to SECNAV in writing, via the Director, NCPB, that it intends to abide by such statutory or regulatory requirement and will implement such recommendation within 30 days unless directed otherwise. Without further direction and the expiration of 30 days, the NC&PB will review each offender's case in light of the statutory or regulatory requirement to determine eligibility. If an offender is determined eligible for the statutorily or regulatorily required program, the NC&PB shall direct that the offender be afforded the opportunity to participate in the program.

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205. Delegation of Authority. Except in cases involving national security, the ASN(M&RA) is delegated the authority to act for SECNAV in matters of clemency and parole. (See SECNAVINST 5430.71 (NOTAL).)

PART III

THE NAVAL CLEMENCY AND PAROLE SYSTEMS

301. Director, NCPB. The Navy or Marine Corps officer appointed by SECNAV (ASN(M&RA)) to provide direct administrative and supervisory oversight of the NC&PB.

302. Functions of the Director

a. Exercise primary cognizance over matters relating to the clemency and parole systems within the Department of the Navy.

b. Administer and supervise the activities of the NC&PB by monitoring the performance of the clemency and parole review systems to ensure compliance with the provisions of this instruction and to avoid delays in the processing and reviewing of individual cases.

c. Convene the NC&PB; appoint the President; and establish membership as prescribed in this instruction.

d. Provide administrative and clerical support for the NC&PB.

e. Inform SECNAV of matters of interest.

f. Recommend clemency and parole policy and procedures to the SECNAV.

g. Propose changes to this instruction to SECNAV.

h. Make recommendations on cases forwarded to SECNAV by NC&PB.

i. Selectively screen clemency and parole cases reviewed by NC&PB for concurrence with NC&PB determinations and forward with recommendations to SECNAV those cases that require final action by SECNAV.

j. Submit to SECNAV a semiannual report covering the operations of the NC&PB (see reference (g)) and to the Secretary of Defense an annual report relating restoration, clemency and parole statistics (see reference (f)).

k. Ensure that a system of records as specified in this instruction is maintained and maintain records required for the administration of military and civilian personnel assigned to the NC&PB.

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l. Protect the contents of records relating to the processing and reviewing of clemency and parole cases in accordance with reference (rp).

m. Ensure that the NC&PB functions are administered in accordance with the appropriate SECNAV instructions dealing with privacy and access to information.

n. Coordinate with the Commandant of the Marine Corps (CMC), the Chief of Naval Personnel (CHNAVPERS), the Chief, Bureau of Medicine and Surgery (CHBUMED) and the Judge Advocate General (JAG) as well as appropriate civilian agencies (e.g., the FBOP, U.S. Parole Commission, and other federal, state and local authorities) in matters associated with clemency and parole of naval service offenders.

o. Maintain appropriate liaison with clemency and parole review authorities in the naval service, other services and civilian officials associated with the naval clemency and parole systems.

p. Take final action on cases involving the appeal of parole denials, except in those cases where the denial decision was made by SECNAV, the final decisional authority in the naval parole system.

q. As the official responsible for complying with the provisions of reference (s) during parole and clemency procedures, ensure compliance with victims' rights and services statutes and instructions. (See references (p) and (u) through (w).

r. Take all other actions necessary for the effective and efficient accomplishment of the NC&PB mission.

303. **NC&PB**. A component of the NCPB created under references (b) through (d) to review, recommend, decide clemency and parole issues in cases of offenders who fall within its jurisdiction as it is defined by this instruction. See paragraphs 304, 305, and 501.

304. **Cases within the Jurisdiction of NC&PB**

a. **General**. The NC&PB has jurisdiction over all special and general court-martial cases in which Navy and Marine Corps offenders and other persons subject to the UCMJ who are tried by Navy and Marine Corps courts-martial are eligible for mandatory clemency review, are eligible for and have requested clemency review, or are eligible for and have requested parole. See paragraphs 401 and 501.

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b. U.S. Coast Guard Cases. When requested by the Commandant of the Coast Guard, NC&PB may:

(1) Provide advisory opinions to the U.S. Coast Guard regarding the appropriateness of clemency as it pertains to U.S. Coast Guard offenders serving sentences of confinement as a result of courts-martial. Clemency decisions regarding U.S. Coast Guard offenders are the responsibility of the Commandant of the U.S. Coast Guard.

(2) Make decisions or recommendations for granting or denying parole in initial and subsequent reviews and on appeal, as well as suspend or revoke parole, of U.S. Coast Guard offenders on the same basis and under the same conditions as are applicable to naval offenders.

c. Convening authorities are required to assist the NC&PB in the exercise of its jurisdiction by providing it promptly with a copy of the record of trial, a copy of the court-martial order, and appropriate post-trial progress reports. See paragraphs 409, 410 and 509, supra; JAGMAN 0153b(2).

305. Cases not Within the Jurisdiction of the NC&PB

a. Cases in which no approved unexecuted portion of a sentence remains.

b. Cases in which the approved sentence does not include either a punitive separation or confinement for twelve months or more.

c. Cases in which approved suspended punitive separations are to be executed as a result of vacation proceedings held under the Manual for Courts Martial.

d. Cases in which offenders have an approved death sentence.

e. Offenders who are unauthorized absentees/deserters or are in the custody of federal, state, local or foreign authorities serving sentence of those authorities at the time they are eligible for mandatory clemency review. They become eligible for mandatory clemency review upon their return to naval custody for completion of their approved court-martial sentence.

f. Offenders whose convening authority action or sentence has been set aside by the U.S. Navy-Marine Corps Court of Military Review, the U.S. Court of Military Appeals, or other appropriate courts of law.

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g. Offenders who are supervised releasees.

306. Mission of the NC&PB. The NC&PB will act for, or provide recommendations or advice to, SECNAV in the issuance of decisions regarding clemency or parole matters, specifically:

a. Mitigation, remission or suspension of any part or amount of the unexecuted portion of a selected offender's sentence, other than a sentence approved by the President of the United States.

b. Remission of a selected offender's punitive separation and restoration to duty or separation with an administrative discharge under honorable conditions.

c. Suspension of a selected offender's punitive separation and restoration of that offender to active duty for a specified period of probation, including the retention of a selected offender beyond the expiration of normal service obligation in order to serve voluntarily a specified period of probation.

d. Reenlistment of offenders who have satisfactorily demonstrated potential for continued military service.

e. Parole of offenders confined in naval brigs serving the confinement portion of an approved sentence of a court-martial who were under the authority of SECNAV at the time of the commission of their offenses.

f. Issuance of advisory opinions on any naval service case in which the offender has been transferred to the FBOP and thus under the parole authority of the U.S. Parole Commission. Advisory opinions will be issued upon request of the U.S. Parole Commission and, as determined by the NC&PB, in those naval service cases in which the NC&PB finds aggravating circumstances or unique military factors present that describe or distinguish the naval service offender's case from the "typical" case for which the U.S. Parole Commission guidelines were set. A copy of the advisory opinion will be provided the offender.

g. Provide information on offender conviction/release from confinement to federal, state or local authorities as required by law or regulation.

h. Ensure compliance with the notification requirements for victims as contained in reference (p) during all clemency and parole procedures.

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307. Composition. The NC&PB is composed of five members, all of them career naval officers selected on the basis of wide military experience, proven performance and education.

a. Nomination. Each of the following will nominate at least two officers as designated below, one as a member of the NC&PB and one or more as alternate members:

(1) CMC: Marine Corps Officers.

(2) CHNAVPERS: Navy line officers.

(3) CHBUMED: Navy psychiatrists or clinical psychologists.

(4) JAG: Officers of the Judge Advocate General's Corps or Marine Corps judge advocates assigned to the Office of the Judge Advocate General (including Naval Civil Law Support Activity).

(5) Director, NCPB: Navy line and/or Marine Corps officers.

b. Grade of Nominees. Nominated officers will normally be of the grade of O5 or O6 with preference given to the latter. Exceptions to these grade requirements may be authorized by the Director, NCPB.

c. Designation of President. The Director, NCPB, will designate appropriate nominees as members and one of those designated members as President of the NC&PB and one as alternate President. The remaining nominated officers will be designated members or alternate members of the NC&PB, as appropriate.

d. Oath. Prior to undertaking duties as a member or recorder of NC&PB, each individual assigned to such duties will execute the following oath or affirmation which continues in effect throughout their service with the NC&PB.

I, _____, do swear (or affirm) that I will faithfully and impartially perform all the duties incumbent upon me as a (member) (recorder) of the Naval Clemency and Parole Board; that I will fully and objectively inquire into the status of the individual in any case, render my individual judgment according to the facts, my conscience and the law and regulations applicable to determining clemency and parole issues present in individual cases before the Naval Clemency and Parole Board, so help me God.

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The Legal Advisor to the Director, NCPB, or other judge advocate, will administer the oath to the members and the recorder.

308. Functions of the NC&PB

a. Clemency. With respect to clemency, the NC&PB will:

(1) Meet with such frequency as to dispose expeditiously of clemency matters referred to it for action.

(2) Conduct clemency review of cases of selected naval service offenders in accordance with the policy and procedures set forth in this instruction.

(3) Obtain, in appropriate cases, documentation from the Naval Investigative Service (NIS) and the Federal Bureau of Investigation (FBI) relating any prior criminal history, including information concerning outstanding arrest warrants for the offender whose case is eligible for clemency review.

(4) Grant or deny clemency in consonance with law and regulations of higher authority except for those cases SECNAV has retained the authority to take final action.

(5) Submit to SECNAV with recommendations for final action cases in the following categories:

(a) Cases involving issues in which SECNAV has personally indicated in writing an official interest.

(b) Cases in which the offender is a naval officer or midshipman.

(c) Cases involving national security as defined in reference (h).

(d) Cases in which the NC&PB recommends clemency for any enlisted offender convicted of:

1. Any single offense for which the maximum punishment authorized by references (a) or (e) includes confinement in excess of 10 years; or

2. Any offense in which the victim is under the age of 16 years or is the offender's spouse;

(e) Cases in which the grant or denial of clemency for an offender may be the subject of controversy or substantial congressional or media interest as determined by either SECNAV, the Director, NCPB, or the NC&PB.

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(f) Cases referred to SECNAV by the Director, NCPB, under the oversight authority set forth in this instruction.

(g) Cases referred to SECNAV for final action by any member of the NC&PB.

(6) Ensure compliance with crime victims' right to information about the conviction, sentencing, imprisonment, and release of offenders, as mandated by reference (p), throughout the clemency process.

b. Parole. With respect to parole, parole is not a right but a discretionary decision of the NC&PB or SECNAV. The NC&PB will:

(1) Meet with such frequency as to dispose expeditiously of parole matters referred to it for action.

(2) Designate as an agent of the NC&PB an appropriate body to conduct a personal appearance hearing in the case of each offender requesting parole.

(3) Review requests and recommendations for parole of naval service and U.S. Coast Guard offenders.

(4) Obtain, in appropriate cases, documentation from NCIS and the FBI concerning any prior criminal history, including information relating to outstanding arrest warrants for the offender who is requesting parole.

(5) Grant or deny parole or, in exceptional cases, set presumptive parole dates in consonance with law and regulations of higher authority except in those cases SECNAV has retained authority to take final action.

(6) Submit to SECNAV recommendations for final action the following cases in which final decisional authority has been retained by SECNAV:

(a) Cases involving issues which SECNAV has personally indicated in writing an official interest.

(b) Cases in which the offender is a naval officer or midshipman.

(c) Cases involving national security as defined in reference (h).

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(d) Cases in which the NC&PB recommends parole for any offender convicted of:

1. Any single offense for which the maximum punishment authorized by references (a) and (e) includes confinement in excess of 10 years; or

2. Any offense in which the victim is under the age of 16 years or is the offender's spouse.

(e) Cases involving any offender whose parole may be the subject of controversy or substantial congressional or media interest as determined by either SECNAV, the Director, NCPB, or NC&PB.

(f) Cases referred to SECNAV by the Director, NCPB, under the oversight authority set forth in this instruction.

(g) Cases referred to SECNAV by any member of the NC&PB.

(7) When appropriate, delay the effective date of parole or rescind the grant of parole prior to an offender's release on parole.

(8) Review recommendations for suspension of parole, preliminary interviews, parole violation hearings and revocation of parole.

(9) When appropriate, suspend parole and, if necessary, direct the parolee's apprehension and return to custody.

(10) If parole is suspended and the parolee is being held on charges by federal, state or local authorities, request the issuance of a detainer on the parolee for return to military authority, except that such request may be held in abeyance pending disposition of the charges.

(11) Order preliminary interviews, parole violation hearings, and parole review hearings.

(12) Designate an appropriate individual or body to act as an agent of the NC&PB to conduct a parole violation hearing when necessary.

(13) Revoke or reinstate parole; or, revoke parole but defer executing the revocation; cancel the deferment or rescind the revocation, if appropriate.

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(14) Order, if appropriate, restoration of good conduct time or extra good time earned prior to release on parole if parole is revoked; and order, if appropriate, credit for time served if incremental parole expires because it is not extended.

(15) Set and modify, prior or subsequent to release on parole, conditions of parole, including requirements for community service, individual or community-based counseling or therapy in substance abuse/dependency, sex-offender/violent offender counseling, therapy and treatment or any other requirement considered necessary to assist the parolee to remain at liberty and live in the community without violating the law.

(16) Issue departmental-level parole decisions in a timely manner.

(17) Ensure compliance with crime victims' right to information about the conviction, sentencing, imprisonment, and release of offenders, as mandated by reference (p), throughout the parole process.

c. Other Functions. The NC&PB may perform other functions as directed by higher authority. As part of those other functions, the NC&PB may:

(1) Make recommendations for the advancement of an offender's clemency or parole eligibility date in exceptional cases.

(2) Make recommendations to the Secretary, other authorities, or to the offender with regard to concerns the NC&PB has after review of the offender's case that do not fall within the jurisdiction of the NC&PB but may fall within the statutory or regulatory jurisdiction of other authorities, e.g., Secretarial designation for medical care, Naval Discharge Review Board/Board for Correction of Naval Records action, restoration of executed portions of the sentence.

(3) Evaluate each case eligible for its review under this instruction and determine whether a violation of the law other than the offense(s) for which the offender has already been convicted has occurred. If, in the opinion of the NC&PB, a violation or potential violation is indicated, refer relevant information to appropriate law enforcement authorities in the locality to which the offender will return upon his or her release from confinement or separation from the naval service.

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Disclosure of this information must be consistent with federal law and regulation and should be accomplished when the offender is released from confinement or upon separation from the naval service, whichever occurs sooner.

(4) Provide relevant information to the Immigration and Naturalization Service of the Department of Justice concerning non-U.S. citizen service members whom it determines fall within the criteria of 8 U.S.C. sec. 1251, such as a general court-martial conviction for an offense involving moral turpitude, serious violence, or drug distribution.

(5) Issue warning to law enforcement authorities of the release of offenders convicted of crimes listed as reportable offenses by the FBI (Appendix B). Warnings will include the offense of which the offender was convicted, the sentence as finalized through judicial and clemency review at the date of release, and the full term release date.

(6) Evaluate each case for substance abuse/dependency (reference (j)). An identification of dependency may be based on a medical diagnosis recorded in the record, a medical diagnosis by the psychiatrist or clinical psychologist NC&PB member based on information in the record, or by a determination of the majority of the NC&PB members. Upon making a determination that an offender is alcohol or drug dependent, ensure that the offender is provided the opportunity to receive inpatient VA treatment, if available, prior to discharge under reference (j).

(7) When requested, or when otherwise appropriate, provide recommendations for parole to federal paroling authorities with custody and parole jurisdiction over offenders of the naval service serving sentences of courts-martial in federal confinement facilities.

(8) Keep itself informed of events, developments and trends in corrections and military justice, including maintaining currency in military and civilian corrections issues (including victims' rights and services) and parole programs, legislation and activities of professional correctional and parole organizations. The NC&PB and/or its representatives are encouraged to join and attend meetings of military, federal and national organizations active in the corrections and parole field. The NC&PB and/or its representatives will visit naval brigs on a regular basis to ensure that policies and procedures contained here are complied with and understood. Such visits will normally be coordinated with appropriate claimants.

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309. **Objectives.** The objectives of the NC&PB are:

- a. The preservation of good order and discipline.
- b. Equality in the administration of justice, including elimination of severe sentence disparity by the remission, mitigation, or suspension of the disparate portion of the sentence.
- c. Protection of the best interests of the naval service, the individual offender, the victim and society.

310. **Evaluative Criteria.** The appropriateness of clemency or parole in an offender's case will normally be evaluated, at a minimum, in light of the NC&PB objectives and on the basis of the following criteria:

- a. Nature and circumstances of the offenses as determined from the record of trial and allied papers, the court-martial order, and relevant investigative reports, if available. In the clemency and parole review of an offender's case that involves national security, as defined by reference (h), the NC&PB will obtain a damage assessment from appropriate authorities if the record of trial or allied papers do not contain such damage assessment.
- b. Military and civilian background of the offender, including age, education, training, experience, marital status, et al.
- c. Post-trial progress report, to include an evaluation of the offender's post-trial attitude, conduct and performance; the offender's adaptation to confinement, sincerity and motivation, including the offender's program plan while serving confinement and progress in meeting that plan. The offender's post-trial denial of guilt of any or all offenses of which the offender was convicted and sentenced contrary to pleas of not guilty is not to be considered an adverse factor by the NC&PB. On the other hand, pleas of guilty at trial may be considered a sign of remorse and rehabilitation by the NC&PB. Also relevant to consideration is whether the offender has recognized the wrongfulness of his or her confining offense, shown genuine remorse, achieved a sense of purpose, demonstrated a desire for self-improvement, or exhibited self-discipline.
- d. Recommendations of the military judge and the staff judge advocate or legal officer; comments of officials in the post-trial

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progress report; comments of the officer exercising general court-martial jurisdiction, and, if available, the commanding officer at the time of trial.

e. A psychiatric/psychological evaluation of the offender, if required; relevant social factors; and, when appropriate, a substance abuse/dependency evaluation or any other identified specialized treatment need.

f. Any statement by any victim (including a governmental agency) concerning the offense for which the offender was convicted, including the family of a homicide victim, concerning the financial, social, psychological and emotional harm done to or loss suffered by such victim. (See references (p) and (u) through (w).)

g. Restitution made to victims by the offender.

h. Comparison of offender's offense(s) and sentence with the offense(s) and sentences of co-accused and/or the sentences of other offenders whose convictions and sentences were under similar circumstances.

i. Recommendations of disposition boards, commanding officers, the CMC or CHNAVPERS.

j. Clemency previously granted by other authorities, including the presumption of earned good conduct time that establishes an offender's minimum release date under the provisions of SECNAVINST 1640.9A.

k. Uniform non-binding guidelines such as those contained in Title 28 Code of Federal Regulations (CFR) adapted to reflect the unique character and requirements of naval service (Appendix C).

l. The offender's race, color, religion, ethnicity, national origin, or gender are not evaluative factors used in determining clemency or parole matters.

m. Exceptions. The NC&PB is authorized to make exceptions to the procedures for clemency and parole review set forth in this instruction upon a determination that the exception is not contrary to law or regulation, prejudicial to the Naval Service or the offender concerned, in order to:

(1) Correct an administrative error that practicably is not otherwise correctable.

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(2) Allow for special circumstances such as, but not limited to: (1) the refusal of an offender to cooperate in the preparation of a post-trial progress report; or (b) the unavailability of a post-trial progress report and the offender's clemency review is overdue as a result of administrative oversight or error; or (c) the offender is unavailable because of unauthorized absence or other reasons at the time the post-trial progress report was prepared.

n. The absence of any of the information set forth in subparagraphs b through i above does not invalidate the clemency or parole review process.

311. Hearings

a. The offender has the right to have a personal representative appear on his/her behalf at the NC&PB hearing. Unless the offender has been released from confinement on parole or upon completion of service of confinement, the offender has no right to make a personal appearance before NC&PB. NC&PB designates the date, time and place of the hearing in all cases but will, at all times, attempt to accommodate the schedules of personal representatives when necessary. The offender is responsible for keeping personal representatives informed about the NC&PB hearing date. Although NC&PB will assist in that regard should the personal representative contact the NC&PB, NC&PB is not required to initiate notification of hearing date to the offender or the offender's personal representative. The offender will be provided all necessary information by the commanding officer or the commanding officer's designee.

b. NC&PB will conduct hearings that are generally open to the public, unless the offender objects, the case involves classified material the revelation of which during the hearing may require the hearing to be closed, or for other good cause. At no time, however, are visitors or personal representatives permitted to be present during the deliberations of the NC&PB. Additionally, the presence of individuals during the NC&PB proceedings will be permitted unless the NC&PB, by majority vote, determines that the presence of such persons interferes with the orderly course of the proceedings.

312. Decisions and Recommendations

a. The NC&PB will make decisions and recommendations with regard to clemency and parole on the basis of the record of trial, the court-martial order, the post-trial progress reports,

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matters presented during personal appearances, and other documents presented to the NC&PB for consideration by the offender, the offender's chain of command/administration, and others who communicate with the NC&PB concerning the offender, including victims and preparers of victim(s) impact statement(s), and, in cases involving national security, damage assessments.

b. The decisions and recommendations of the NC&PB will be based upon the requests and recommendations contained within the information presented to the NC&PB and will include, at a minimum, consideration of the objectives, evaluative criteria and other policy contained within this instruction.

c. The NC&PB will refrain from developing conclusions as to guilt or innocence of the offender, and will accept the findings of offender's court-martial as approved or affirmed at the time the offender's case is before it for review.

d. Decisions and recommendations of the NC&PB will be reached through a simple majority of the voting members. Five members will constitute a quorum. In the event of a tie vote, as the result of an abstention, the NC&PB will refer the case to SECNAV with a recommendation from the Director, NCPB. In the unusual circumstance that a member is unable to attend the scheduled hearing, the member will arrange for his/her alternate to attend or the Director, NCPB, will designate an alternate member to sit.

313. Endorsements. Clemency and parole cases forwarded to SECNAV under the provisions of this instruction will be submitted with the entire case file and NC&PB's written recommendations and supporting reasons via the Director, NCPB, for endorsement. If the NC&PB is not unanimous in its recommendations, the recommendations and reasons therefore will be set forth for each divergent view. The Director will either concur or nonconcur, providing reasons for noncurrence.

314. Action

a. Clemency and parole decisions will be documented in writing and normally distributed by means of the U.S. Postal Service to cognizant commands, activities and offices, including prison wardens, where appropriate. The cognizant command or authority having the most direct contact with the offender will ensure that the offender is promptly provided a copy of the action of NC&PB or SECNAV. NC&PB will ensure known victims are kept informed, as required by reference (p).

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b. Documents issuing decisions of the NC&PB granting or denying clemency or parole and decisions of SECNAV granting or denying clemency or parole will bear the signature of the President, NC&PB, or, upon designation, the Executive Secretary. Decisions of the Director, NCPB, granting or denying parole appeals will bear the signature of the Director, NCPB.

c. Clemency and parole decisions will be executed promptly by cognizant Navy and Marine Corps commands. The authority to execute dismissals, dishonorable discharges, bad conduct discharges or other discharges subsequent to completion of NC&PB clemency review, however, will not be exercised until completion of judicial review of an offender's case under Article 71(a), UCMJ.

315. **NC&PB Deliberations.** NC&PB deliberations are closed with only the members and staff as required in attendance. Although the final vote of the NC&PB in an offender's case may be disclosed, the deliberations and votes of the individual members of the NC&PB are confidential and will not be released unless directed by SECNAV or the Director, NCPB, upon a showing of good cause which includes, but is not limited to, evidence of bias/prejudice or lack of impartiality.

316. **Additional Procedures.** Any additional procedures the NC&PB requires to carry out its responsibilities as set forth in this instruction will be prescribed by the NC&PB.

317. **Time Limitations.** Any time limitations contained in this instruction are for administrative due process and procedural efficiency purposes and are not intended to create any substantive legal rights under the UCMJ or any other provision of law.

318. **Medical Care.** Offenders whose sentences include a punitive separation and who are pending completion of appellate review and are either on parole or on appellate leave are still members of the naval service. Accordingly, they are authorized medical care to the same extent as other naval service members. An offender on parole whose administrative or punitive separation has been executed is not eligible for military medical care. Offenders who are retired are entitled to medical care as any other military retiree. If the circumstances are exceptional, offenders who are not otherwise authorized care may request secretarial designee status under the provisions of NAVMEDCOMINST 6320.3B. The NC&PB may also recommend secretarial designee status in exceptional cases.

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319. Records

a. A record of votes in each clemency and parole decision and recommendation will be maintained. Dissents will be identified. Members will sign a Results of Proceedings recording their decisions and recommendations.

b. A system of records of clemency and parole case files will be maintained per applicable directives.

c. At a minimum, clemency and parole case files will be maintained as follows:

(1) Clemency decisions will be maintained permanently.

(2) Computer files reflecting identifying data or the equivalent information will be maintained permanently.

(3) Semiannual statistical reports will be maintained permanently. Such reports will reflect the number of cases reviewed, requests from individuals and the final action. The data will also identify forms of clemency (e.g., restoration, reduction in confinement, remission of fine), parole and major offense categories (e.g., unauthorized absence, possession, use, distribution of illegal drugs).

(4) Historical data concerning mission, functions, organization, policy and procedures of the departmental clemency and parole systems will be maintained permanently.

320. Release of Information

a. Records maintained by NC&PB for use in parole and clemency determinations constitute law enforcement records, as defined by reference (r). All requests for information under the PA and/or FOIA shall be processed in accordance with references (r) and/or (s), as appropriate, with due regard for the protection from disclosure provided to law enforcement records by the cited references, and for the exemption claimed for NC&PB files found in the List of Exempt Systems contained within reference (r). Offenders (first-party requesters) being considered for clemency or parole will, upon written request to Director, NCPB, be afforded access to their records consistent with the principles set forth in references (r) and (s). Requests by offenders for access to records pertaining to themselves shall be processed under both references (r) and (s) regardless of how the request is styled. (See paragraph 7.) The intent is to maximize release

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of information to offenders being considered for clemency or parole, subject to the protection from disclosure and exemption mentioned above. See the policy discussion in reference (s) for guidance on the use of exemptions and discretionary release of information. Particular care shall be exercised in the processing of the following requests:

(1) Medical and psychological records which, if made known to the eligible offender, "could have an adverse affect on the mental or physical health of the individual." (See the discussion on "Denying Individual Access" to records in reference (p).)

(2) Documents which reveal sources of information obtained upon a promise of confidentiality, including, but not limited to, a victim's statement. (See the definition of "confidential source" in reference (r), and the general discussions about law enforcement records in references (r) and (s)).

(3) Any other information which, if disclosed, could reasonably be expected to endanger the life or physical safety of any individual. (5 U.S.C. sec. 552(b)(7)(F).)

(4) Information/documents provided to the NC&PB by the USDB, Ft. Leavenworth, Kansas, are not releasable by NC&PB personnel. Written requests for information or documents originated by USDB will be forwarded to USDB as prescribed in reference (s).

b. Documents affected by exemptions from disclosure contained within references (r) and (s) will be withheld or redacted only to the extent required by references (r) and (s). Otherwise, upon written request, they will be released to the extent permissible under the PA and FOIA.

c. As the Responsible Official for Navy Clemency and Parole matters, the NC&PB will provide sufficient advanced notice to the confinement facility of all proposed clemency and parole hearing dates to allow enough time for the facility to notify victims who have requested such notification. Victims shall have the opportunity to submit documentary evidence or correspondence to be reviewed by the board and to a personal appearance if determined appropriate.

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321. Correspondence and Questions. Correspondence and questions involving expressions of policy not contained within this instruction and questions as well as requirements for resources, or events/conduct which reflect upon the performance of the NC&PB, will be addressed or referred to the Director, NCPB, 801 North Randolph Street, Suite 907, Arlington, Virginia 22203-1989. Correspondence and questions pertaining to the Department of the Navy clemency and parole systems as contained within this instruction will be answered by the staff of the NC&PB as soon as possible. Written requests should be directed to:

President, Naval Clemency and Parole Board
801 North Randolph Street
Arlington, VA 22203-1989

Telephonic requests may be made to either of the following numbers based on the subject of the inquiry. The DSN prefix is 226, the commercial prefix is 703-696, and the FTS prefix is 696:

President/Executive Secretary/Parole Management Unit	4190
Administrative, Case Management	4592
FAX	4556

PART IV

CLEMENCY REVIEW POLICY AND PROCEDURES

401. Eligibility for Clemency Review. The cases over which SECNAV (NC&PB) has jurisdiction to conduct clemency review are established in paragraph 304 and as hereinafter defined as eligible. Only selected offenders convicted by special or general courts-martial whose sentences have been approved by the convening authority are eligible for initial and, as required hereinafter, subsequent annual clemency review. The categories of selected offenders eligible for clemency review by NC&PB are:

a. Mandatory Clemency Review. Any offender whose sentence as approved by the convening authority includes confinement for 12 months or more, including any offender

(1) who has been transferred to the jurisdiction of the Attorney General of the United States and/or is incarcerated in a facility of the FBOP serving terms of confinement adjudged by court-martial; or

(2) who has been released on parole from an FBOP facility by the U.S. Parole Commission and is under the supervision of a U.S. Probation Officer;

and who has not submitted a written waiver of clemency review is entitled to mandatory clemency review until released from supervision either because of completion of confinement at minimum release date (full-term date minus good conduct time and extra good time) or completion of confinement due to completion of full-term date while on parole.

b. Requested Clemency Review. Any offender whose sentence as approved by the convening authority includes confinement for less than 12 months and an unsuspended punitive separation or any supervised releasee of a facility of the FBOP after service of a term of confinement adjudged by court-martial who submits a written request for clemency review is entitled to clemency review.

c. Upon request of the Commandant of the U.S. Coast Guard, any Coast Guard offender's case will be reviewed and an advisory opinion provided the Commandant of the U.S. Coast Guard.

402. Eligibility for Types of Clemency. All offenders eligible for clemency review may be granted clemency of an appropriate type with regard to the unexecuted portion of the sentence in consonance with the objectives and evaluative criteria set forth in Part III of this instruction. See paragraphs 309 and 310.

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a. All offenders whose sentences include approved confinement for 12 months or more or an approved unsuspended punitive separation will ordinarily be eligible for remission, mitigation or suspension of any unexecuted portion of their sentences, including the upgrading of the punitive discharge or substituting the unexecuted punitive discharge with an administrative discharge under honorable conditions.

b. All offenders whose sentences include an approved unsuspended punitive discharge or unsuspended dismissal are eligible for restoration, retention or reenlistment, if

(1) they are suitable, as defined in subparagraph c below, and evidence, by written request, a desire for restoration, retention or reenlistment;

(2) they have completed all or a portion of the sentence to confinement, if any was adjudged or ordered executed without suspension.

c. Ordinarily the following offenders are not eligible for restoration, retention or reenlistment:

(1) Offenders convicted of an offense involving serious violence, national security as defined in the JAGMAN, distribution of controlled substances, desertion or unauthorized absence from a ship or unit in or scheduled to enter a combat area, sexual perversion, or theft from another service member.

(2) Offenders who are mentally or physically unsuitable for duty, or have a record of military or civilian offenses indicating incorrigibility.

d. Restoration or retention of an offender is accomplished either by remitting the punitive separation or by suspending the approved punitive separation for a stated period of service or until the occurrence of an anticipated future event, the period of suspension not normally to exceed one year. The NC&PB will specify the period of suspension or any anticipated future event whenever it grants or recommends restoration to duty by suspending the punitive separation.

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(1) The unsuspended punitive separation of an enlisted offender may be suspended and the offender restored to duty only if sufficient time remains on the offender's current enlistment (as extended by lost time) to permit service through the entire period of suspension.

(2) The unsuspended punitive separation of an enlisted offender who does not have sufficient time remaining on the current enlistment (as extended by lost time) may be suspended if the offender agrees in writing prior to the effective date of the suspension, to an appropriate extension of enlistment to enable the offender to serve the entire period of the suspension.

e. Any period of suspension directed by the NC&PB begins and expires as directed by NC&PB or SECNAV. The date the suspension period begins to run ordinarily is the date of the NC&PB promulgating order. Expiration of the period of suspension will automatically cause the remission of the punitive separation unless the suspension is sooner vacated. The suspension may be vacated for cause in accordance with the MCM and other pertinent regulation and law. The NC&PB must be notified in writing of the vacation of any suspension.

403. Clemency Review Eligibility Date. NC&PB will conduct an initial clemency review of the cases of all offenders eligible for clemency review within 60 days of the offender's clemency review eligibility date as defined below. Any required subsequent reviews will be conducted annually within 30 days of the anniversary of the clemency review eligibility date.

a. The clemency review eligibility date for all mandatory clemency review cases is 9 months from the confinement began date. The clemency review eligibility date for all requested clemency review cases is 10 days after the date the offender submits a request for clemency review to the convening authority or the OEGCMJ.

b. For purposes of establishing the clemency review eligibility date, the "confinement began date" includes a constructive date calculated as follows: adjudged date minus (-) all days of pretrial confinement and any administrative pretrial confinement credits plus (+) the days the sentence to confinement was properly deferred. Reviews conducted "annually thereafter" means until completion of confinement at minimum release date or at full-term date for those released from confinement on parole. But see paragraph 405b for procedures for clemency review for offenders whose completion of confinement occurs prior to the execution of their punitive separation.

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c. From the Results of Trial received by the Office of the Chief Judge, Navy-Marine Corps Trial Judiciary at the end of each calendar month, the Chief Judge will provide the NC&PB, by the 10th of each month following the month of receipt, the name of any offender tried by court-martial who was adjudged confinement of 12 months or more, the date sentence was adjudged, the identity of the convening authority and, if possible, the period the offender spent in pretrial confinement and the sentencing conditions of any pretrial agreement (particularly as it relates to the period of confinement approved and suspended).

d. Upon receipt of information that NC&PB has jurisdiction over a case, the NC&PB will monitor that case in relation to its clemency review eligibility date. If the NC&PB has not received a copy of the offender's record of trial, court-martial order, and post-trial progress report within 60 days of the offender's clemency review eligibility date, the NC&PB will initiate action to obtain the required documentation. Within 60 days of receipt of all required documentation, the NC&PB will conduct the offender's initial clemency review with annual clemency review conducted thereafter within 30 days of the offender's clemency review eligibility date. In those cases involving requested clemency review, the NC&PB will conduct a clemency review within 60 days of receipt of that request. If the NC&PB does not have the documents required to conduct its review but has received a copy of the request, it will initiate procedures to obtain those documents.

e. The NC&PB may omit a scheduled clemency review when an offender waives clemency review under the procedures set forth in paragraph 410.

f. The NC&PB, upon receipt of significant new information about an offender, may, on its own motion, conduct a clemency review before the offender's next clemency review eligibility date.

g. When an offender is considered for parole under Part V of this instruction, the NC&PB will also conduct a clemency review, to include, upon request, restoration to duty or reenlistment. If the offender is denied parole, the date of that denial establishes the offender's clemency review eligibility date for subsequent annual reviews.

h. After an offender is released on parole by the NC&PB, the NC&PB will conduct a clemency review within 30 days of the one year anniversary of the parole release date. Thereafter, the

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404. Schedule for Clemency Review. Offenders who are eligible for mandatory clemency review (except for offenders in the custody of the FBOP or under the supervision of a U.S. Probation Officer) and offenders who desire to request clemency will act in accordance with the following schedule:

a. Mandatory Clemency Review. Within 10 days after receipt of the convening authority's action in the offender's case, an offender eligible for mandatory clemency review who does not desire clemency review by the NC&PB will submit to the convening authority or the OEGCMJ, in writing, copy to NC&PB, a waiver of mandatory clemency review. This waiver should include signature and date to ensure compliance with applicable time goals. The procedures for such a waiver are provided in paragraph 410. The offender is entitled to the advice of defense counsel before submitting such a waiver. See paragraph 410b. Upon expiration of the 10 days, if a waiver of clemency review has not been received by the convening authority, the convening authority will forward to NC&PB a copy of the offender's record of trial, court-martial order and will ensure that a post-trial progress report is submitted.

b. Requested Clemency Review. No later than 10 days after the receipt of the convening authority's action, an offender not eligible for mandatory clemency review but eligible to request clemency review will notify the convening authority or the OEGCMJ, in writing, copy to the NC&PB (and for Navy another copy to Naval Appellate Leave Activity), that the offender requests clemency review. The offender then has 20 days within which to file the request for clemency review and any supporting documents with the convening authority or OEGCMJ. Failure to meet the submission requirements in a timely manner, without good cause shown, may result in denial by NC&PB of the request for clemency review. The offender is entitled to the assistance of defense counsel in submitting such a request.

c. The offender's trial defense counsel will ensure that offenders eligible for annual mandatory clemency review are advised of their clemency review eligibility date. Offenders may waive an annual mandatory clemency review, and if that is their desire, the procedures set forth in paragraph 410 will be followed.

d. Offenders may withdraw their case from clemency consideration by the NC&PB any time prior to the NC&PB's review by submitting a signed written withdrawal to the NC&PB witnessed in

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NC&PB will conduct the annual clemency review within 30 days of the anniversary of the date parole began; thus, the offender's parole release date becomes the clemency review eligibility date for subsequent annual reviews.

i. If a parolee is returned to confinement following revocation of parole, the NC&PB will resume conducting clemency reviews within 30 days of the anniversary of the clemency review eligibility date upon the offender's service of one year of confinement after return to confinement from parole.

j. In cases involving mandatory clemency review, where the convening authority's action is taken after an offender's clemency review eligibility date, or where lack of documentation prevents NC&PB from conducting a timely review after reasonable attempts to obtain such documents, the NC&PB may, with or without using the evaluative criteria set forth in paragraph 310, grant clemency in an amount that does not exceed the unexecuted confinement, forfeitures or fine, including periods of suspension, equivalent to the lapse of time between the clemency review eligibility date and the date of review. Punitive separations are not affected by this administrative enforcement provision. Additionally, this administrative enforcement provision is not intended to and does not create any rights, substantive or procedural, enforceable at law by any offender or any other person in any matter, civil or criminal.

k. Failure of NC&PB to receive the documents required for conducting clemency review within 90 days after an offender's clemency review eligibility date, without good cause shown, will permit the NC&PB to invoke the enforcement provision found in paragraph 403j. Good cause ordinarily consists of something that affected either (1) the decision not to request clemency review that was beyond the control of the offender such as receipt of information that was unknown or unavailable to the offender at the time the decision had to be made; or, (2) a reasonable explanation from the convening authority as to what caused the delay in taking action within the six month period before the clemency review eligibility date such as the complexity of the issues that had to be resolved by the convening authority before action could be taken. If good cause is found to exist, the NC&PB will review the case, including those cases in which no portion of the sentence remains unexecuted. In those cases in which no portion of the sentence remains unexecuted, the NC&PB will make a determination that its review of unexecuted portions of the sentence was hindered by the good cause found and recommend corrective action, if appropriate, to the Secretary.

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c. The SECNAV, the Director, NCPB, and the President, NC&PB, may direct special reviews, and the NC&PB itself may review cases on its own motion.

d. Those recommending special clemency review should ensure the NC&PB has a post-trial progress report as current as possible although the convening of a special Disposition Board is not required.

407. The Post-Trial Progress Report. The post-trial progress report includes, but is not limited to, the following:

a. A signed written request for clemency for those cases where the offender is not entitled to mandatory clemency review.

b. A statement, in some form, from the offender stating the type and amount of clemency requested and the reasons for the clemency requested; otherwise NC&PB will review the offender's case and consider all types of clemency.

c. An evaluation from either the offender's commanding officer or the convening authority regarding the offender's attitude, conduct and performance since sentence was adjudged if the offender returned to duty for more than 90 days after release from confinement.

d. An evaluation from either the offender's commanding officer or the convening authority regarding the offender's potential for restoration, retention, or reenlistment and appellate leave status.

e. A psychological/psychiatric evaluation, if one has been completed since the date sentence was adjudged, or if one is deemed appropriate in light of circumstances known or made known to the commanding officer or the convening authority prior to or since the date sentence was adjudged, including a substance abuse/dependency evaluation, if appropriate.

f. Endorsements of officials in the chain of review.

g. The following forms will be used in connection with the clemency review of eligible offenders except those in the custody of the FBOP or under the supervision of a U.S. Probation Officer.

(1) To request clemency review -- NAVSO 5815/2 (Rev 8-80) or its equivalent (required only for those offenders not eligible for mandatory clemency review).

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accordance with the provisions of paragraph 410e. The signed written withdrawal may be in the form of a letter or a pen-changed modification of NAVSO 5815/4 (5-81), the pen-change indicating "withdrawal" or "withdraw," as appropriate, wherever the word "waiver" or "waived" appears.

e. Waiver of submission of matters under Rule of Courts-Martial 1105 does not constitute a waiver of clemency review under the provisions of this instruction.

405. Initiation of Clemency Review

a. Offenders Who Are Confined. For offenders who will be in confinement at the time of their clemency review eligibility date, the commanding officer will, without further direction, determine the offender's clemency review status. If the commanding officer determines that an offender subject to mandatory clemency review has not submitted a waiver in accordance with paragraph 404a, or that an offender has requested clemency review in accordance with paragraph 404b, the commanding officer will initiate the clemency review process without further direction.

b. Offenders Who Are Not Confined. For offenders who will not be in confinement at the time of their clemency review eligibility date, the convening authority will determine whether the offender has waived clemency or requested clemency without further direction. If the convening authority determines that the offender subject to mandatory clemency review has not waived clemency review, or an offender has requested clemency review, the convening authority will initiate the clemency review process without further direction. The fact of receipt or nonreceipt by the convening authority of a waiver of mandatory clemency review or a request for clemency review per the schedule set forth in paragraph 404 may be the basis upon which a determination is made to initiate the clemency review process.

406. Special Clemency Reviews

a. Commanding officers may submit clemency review documentation to the President, NC&PB, for a special review any time before execution of the punitive separation or completion of confinement. This type of request normally should be reserved for instances in which newly discovered, substantially relevant information would alter a previous recommendation.

b. The CMC and the CHNAVPERS may request special reviews as deemed necessary.

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annual clemency review eligibility date, the post-trial progress report must be received in a timely manner. To ensure that timeliness, the following provisions for submission of the post-trial progress report are established:

a. Post-trial progress reports on offenders with approved unsuspended punitive separations and less than 12 months confinement who will not be confined at the time of their clemency review eligibility date will be submitted to the NC&PB as soon as practicable but no later than 30 days after the date of the request.

b. Post-trial progress reports on offenders who will be in confinement at the time of their clemency review eligibility date will be submitted to the NC&PB when the offender has served seven months from the date confinement began and then annually thereafter on the anniversary of the clemency review eligibility date until completion of service of sentence to confinement.

c. Post-trial progress reports for offenders programmed for transfer to the custody of the FBOP will be submitted to the NC&PB 4 months prior to the projected transfer date, if possible. Each of these post-trial progress reports should be clearly marked as pertaining to an upcoming federal transfer. NC&PB will forward with recommendations, as appropriate, to the U.S. Parole Commission a copy of the offender's briefing file held by NC&PB.

d. Copies of the offender's post-trial progress reports will accompany an offender when the offender is transferred to another naval brig or confinement facility for completion of service of the offender's court-martial sentence. One copy of the offender's most recent post-trial progress report that accompanies the offender upon transfer and a copy of the offender's transfer orders will be sent to NC&PB. Should the offender's conduct have significantly changed since the date of that most recent progress report, comments to that effect should be made by endorsement of the commanding officer.

409. Procedures for Submission and Endorsement of Post-Trial Progress Reports for Clemency Review

a. Commanding officers will submit the original of the post-trial progress report to the President, NC&PB, on offenders not in confinement at the time of their clemency review eligibility date in accordance with the schedule set forth in paragraph 408a and the requirements of paragraph 407.

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(2) To prepare post-trial progress reports:

(a) For offenders confined at their clemency review eligibility date--DD Forms 1476, 1477, 1478 and 1479, or their equivalent, may be used.

(b) For offenders not confined at their clemency review eligibility date--a status report relating information of a nature similar to that contained in DD Forms 1476, 1477, 1478 and 1479 but modified to reflect a non-confinee's attitude, conduct and performance of duty, including:

1. Comments from the offender's immediate supervisor if the offender returned to duty for more than 90 days after release from confinement.

2. A substance abuse/dependency evaluation if the offense for which the offender was convicted was alcohol or drug-related or the offender has a history of such abuse.

3. If the offender had been confined as the result of an adjudged sentence by court-martial but released from confinement due to completion, deferment or suspension of confinement, comments should include the commanding officer's evaluation (DD Forms 1476, 1477, 1478 and 1479 or their equivalent, as appropriate) of the offender while in confinement.

(c) For offenders on appellate leave at the time of their clemency review eligibility date, the convening authority or the OEGCMJ over the offender at the time of his/her release from confinement will forward a copy of the offender's executed appellate leave orders and notify the NC&PB of the status of the payment of any fines adjudged against the offender, or any restitution made to any victims, if any, and all other relevant information.

h. If NC&PB is not in receipt of a post-trial progress report on an offender still serving confinement at the time the offender is eligible for annual (*i.e.*, subsequent to the initial) review of his/her case, NC&PB will hear the case as scheduled without such report unless it directs that review be held in abeyance until the report is received.

408. Timeliness and Schedule for Submission of Post-Trial Progress Reports. For NC&PB to conduct an initial clemency review within 60 days of the offender's clemency review eligibility date, and within 30 days of the anniversary of the offender's

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between psychopathology (or substance abuse/dependency) and the offense, the probability of recurrence of criminal behavior should be clearly stated.

(c) In cases involving child abuse, sexual abuse, or other serious violence against a person, a recommendation concerning treatment should be made. Whether or not treatment is recommended, an assessment of the offender's threat to society will be included. If the offender has had any contact with the Family Advocacy Program of the Navy or Marine Corps, that fact should be brought to the attention of the NC&PB.

(d) Psychiatrists, clinical psychologists, or clinical social workers must also estimate the probable efficacy of post-discharge treatment program(s) if there is any history of psychological or substance abuse problems, and indicate whether or not the individual is motivated for such a program, if appropriate.

(e) Psychiatrists, clinical psychologists, or clinical social workers may comment on any part of the sentence which they believe should be modified.

(f) The psychological or psychiatric evaluation should be amended or a new evaluation prepared whenever new information might change the impression, diagnosis or prognosis.

(4) The post-trial progress report should state the citizenship of the offender. In cases of an offender who is not a U.S. citizen, the report should indicate the date and place of entry and, where applicable, the alien registration number.

(5) A statement will be included indicating that an FBI National Crime Information Center (NCIC) computer system criminal history check has been made and the results.

(6) A victim impact statement, if appropriate and available, consistent with the evaluative criteria found in paragraph 310f may be considered.

(7) A disposition board will submit recommendations and supporting reasons in the cases of all offenders confined in naval brigs.

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b. Commanding officers will submit the original of the post-trial progress report to the President, NC&PB, on all naval service personnel in confinement at the time of their clemency review eligibility date in accordance with the schedule set forth in paragraph 408b.

c. Commanding officers will ensure that the post-trial progress reports are completed as follows:

(1) All required DD forms, or their equivalent, comprising the basic progress report, plus the individual's clemency request, if any, will be completed in their entirety except as provided in paragraphs 409d and e.

(2) All offenders who have an approved sentence will be evaluated for substance abuse/dependency. The substance abuse/dependency evaluation will be made by a trained substance abuse counselor whose primary duty is screening and evaluating service members for substance abuse/dependency. If the substance abuse counselor determines the offender is dependent or cannot resolve the dependency issue by finding non-dependency, the substance abuse counselor will refer the offender to a psychiatrist or clinical psychologist trained in substance abuse matters for a medical diagnosis in accordance with the nomenclature of the Diagnostic Statistical Manual (III)R (DSM (III)R), if appropriate. Where there is no psychological/psychiatric diagnosis, the evaluation will so state. If the offender has had any contact with the Navy or Marine Corps Substance Abuse Program prior to incarceration, that fact should be brought to the attention of the NC&PB. See reference (j).

(3) For offenders convicted of sex offenses or other serious violent crimes whose approved unsuspended sentence to confinement includes 12 months or more, a psychiatric/psychological evaluation will be completed by a psychiatrist, clinical psychologist, or clinical social worker trained in the evaluation and treatment of those types of offenders necessary to meet their specific treatment and therapeutic rehabilitation.

(a) The evaluation will include a complete, individualized psychological/psychiatric history of the offender.

(b) A diagnosis consistent with the nomenclature of the DSM(III)R will be recorded. Where there is no diagnosis, the evaluation will so state. The relationship between the psychopathology (including substance abuse or dependency) and the confining offense will be specified, even if the psychopathology did not render the offender incompetent. If there is a relationship

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(8) The commanding officer will submit recommendations and supporting reasons in the cases of all offenders confined in naval brigs.

d. If the sentence does not include confinement or if confinement has been deferred or suspended from the date confinement was adjudged, a report of a disposition board and a commanding officer is not required, and those portions of DD Forms 1476-1479 or their equivalent that refer to performance in confinement are not applicable. The remainder of the forms, however, will be completed by the convening authority or the OEGCMJ.

e. If the commanding officer is unable to forward a complete post-trial progress report because the adjudged or sentenced offender refuses to cooperate in its preparation, is an unauthorized absentee or because of an explained administrative error, the commanding officer will forward the incomplete report and state therein the reasons prescribed procedures could not be followed.

f. If an offender executes a request or waiver which is a change from one previously forwarded, or if new information is obtained which would result in a change to a recommendation on a request previously forwarded, and, in either situation, final action as described in paragraph 314 has not been taken by NC&PB, the commanding officer will notify the NC&PB immediately. Appropriate forms and information supporting the new request, waiver or recommendation will be forwarded to NC&PB as soon as practicable. This paragraph will not be construed as authorizing a withdrawal of a waiver previously forwarded.

g. The NC&PB will request prison wardens to submit progress reports and any recommendations, if appropriate, for clemency in the cases of naval offenders who are serving sentences of court-martial in the custody of the FBOP. If such offenders have been paroled from the FBOP, the NC&PB will request reports and recommendations from supervising U.S. Probation Officers. Requests from offenders, either incarcerated or paroled, are not required. The reports and recommendations should be executed at the frequency stated in paragraph 408b and should be forwarded directly to the President, NC&PB.

h. If the convening authority has not previously forwarded to the NC&PB one copy of the offender's record of trial and court-martial order at the time the post-trial progress report is submitted, those documents must be forwarded in conjunction with the submission of the post-trial progress report.

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i. The NC&PB will forward a copy of post-trial progress reports and recommendations to CMC or CHNAVPERS, as appropriate, for recommendation.

j. The CMC (JAM) or CHNAVPERS (PERS 83), as appropriate, will:

(1) Review post-trial progress reports from military commands, progress reports from prison wardens and reports from U.S. Probation Officers as provided by NC&PB.

(2) Forward appropriate recommendations with supporting reasons to the NC&PB within 10 working days of receipt of clemency review documentation. The NC&PB may presume CMC or CHNAVPERS concurrence with the commanding officer when no such recommendation has been received by the date of the clemency review hearing.

k. Although this provision refers to clinical psychologists and clinical social workers, it is understood that CHNAVPERS may, upon submission of qualifications, waive the requirements and accept psychological evaluations from any civil service rated psychologist who has been trained in the treatment and rehabilitation of the specific offense. If no such individual is available at the naval brig, however, then the offender will be referred for such evaluation.

410. Procedures for Waiving Mandatory Clemency Review

a. The convening authority, commanding officer, or the OEGCMJ (the authority geographically closest to the offender unless otherwise designated by the OEGCMJ) will ensure that offenders waiving mandatory clemency review understand clearly:

(1) The consequences of their options as outlined on DD Form 5815/4 (8-81) Waiver of Clemency Review.

(2) That the NC&PB will not review the case again until the next annual mandatory clemency review unless scheduled or directed as provided by paragraph 406.

(3) That NC&PB's mandatory clemency review is an administrative process that is independent of, and different from the clemency review available under Article 74, UCMJ R.C.M. 1105, MCM, and the provisions of 10 U.S.C. secs. 1552 (BCNR) and 1553 (NDRB).

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b. The waiver of initial mandatory clemency review will be executed by the offender in the presence of and witnessed by the offender's trial or appellate defense counsel, ordinarily a judge advocate certified in accordance with Article 27(b), UCMJ, his/her civilian attorney or a judge advocate detailed or made available for the sole purpose of advising the offender of the clemency options available and their consequences. A judge advocate detailed solely for the purpose of advising the offender of clemency options will make clear to the offender the limited extent of this service and that such advice will not be construed as establishing an attorney-client relationship although attorney-client confidentiality will be observed.

c. If an offender waives the initial mandatory clemency review, the convening authority, commanding officer or OEGCMJ, as appropriate, will forward the original and copy of the completed Waiver of Clemency Review, NAVSO 5815/4 (5-81), or its equivalent, and a copy of the court-martial order or convening authority's action directly to the President, NC&PB, per the schedule for submission of post-trial progress reports (see paragraph 408).

d. A waiver of initial mandatory clemency review by offenders with sentences of 2 years or less constitutes a waiver of all clemency review by the NC&PB because their minimum confinement release date will ordinarily occur before the first anniversary of their clemency review eligibility date. (A copy of the offender's record of trial and court-martial order must be forwarded to the NC&PB in all cases in which the offender's approved sentence to confinement includes an approved 18 months or more despite the offender's waiver of initial clemency review in order for NC&PB to review the offender's case should the offender request parole.)

e. After an offender has submitted a waiver of initial mandatory clemency review, that offender may waive any subsequent annual mandatory clemency reviews by executing the waiver form in the presence of a judge advocate, civilian lawyer or commissioned officer. The lawyer or commissioned officer will advise the offender of the clemency options and their consequences and will witness execution of the form. Advice provided by the judge advocate is limited and does not result in the formation of an attorney-client relationship unless that judge advocate is continuing an attorney-client relationship as a result of assignment as the offender's trial defense or appellate defense counsel.

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f. An offender may rescind any waiver of clemency review he/she submitted within 90 days of the date of the execution of the waiver. Rescissions will be submitted via the offender's commanding officer, copy to NC&PB. The commanding officer will forward the rescission with recommendations regarding clemency within 10 days of the receipt of the rescission. By copy of the commanding officer's endorsement of the offender's rescission, the commanding officer notifies the OEGCMJ over the offender at the time of the offender's court-martial of the rescission in order to ensure compliance with the clemency review documentary filing requirements set forth in this instruction except as provided in subparagraph g below as well as the admonition specifically set forth in paragraph 414.

g. Post-trial progress reports are not required in cases in which the offender waives mandatory clemency review. If an offender who has waived clemency review rescinds that waiver, a post-trial progress report is required only if the offender is still in confinement on the date of rescission. If the offender who rescinds a waiver is not confined at the time of rescission, but desires NC&PB to consider information relating to his/her behavior, attitude and progress during his/her period of confinement, it is the offender's responsibility to obtain and submit such information. The offender may submit statements from naval brig personnel and others attesting to their individual vice official opinion as to the offender's behavior, attitude and progress during and after confinement. A Disposition Board is not required.

h. The forwarding endorsement on the Waiver of Clemency Review will contain a certification that the offender submitting the waiver is either:

(1) Not substance dependent within the meaning of Diagnostic and Statistical Manual Three Revised DSM (III)R and International Classification of Diseases, 9th revision (Clinically Modified) IICD9 (CM)); or,

(2) Has been offered treatment through either a military treatment facility (MTF) or the Department of Veterans Affairs (VA).

i. Since mandatory clemency review under this instruction is an administrative review outside the UCMJ, a waiver of appellate review, in and of itself, does not constitute a waiver of initial mandatory clemency review under this instruction although it may

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be a waiver with regard to clemency review under regulations implementing Article 74, UCMJ. In order for a waiver of NC&PB review to be valid, it must contain a specific statement indicating the offender also waives mandatory clemency review before NC&PB. An offender's waiver of R.C.M. 1105 submissions is not a waiver of clemency review by NC&PB.

j. Waivers of mandatory clemency review subsequent to the initial clemency review should be submitted per the schedule for submission of post-trial progress reports set forth above.

k. Copies of waivers of NC&PB clemency review will be forwarded to the OEGCMJ, the offender's service record and confinement record.

411. Notification of Offenders Pending Appearance Before Clemency Hearing. Once a clemency review is scheduled for an offender eligible under the provisions of this instruction, the NC&PB shall notify the confinement facility of the offender prior to the date of the review.

412. Action upon Receipt of NC&PB Promulgated Clemency Decisions

a. The CMC or CHNAVPERS, as appropriate, will ensure that the clemency decision is entered in the field service record or service record book of the offender, and any known victim is informed, as required by reference (p). Entries will include action directed, the date of the action and the authority and, if applicable, the rationale therefor. In cases of restoration to duty, the entry will include the date specified for restoration to duty, the period for which the unexecuted portion of a sentence is suspended and the total unexecuted portion of the sentence remaining to be executed if the suspension is subsequently vacated. If the offender has completed the period of confinement and only the punitive separation is suspended incident to restoration, the fact should be clearly stated: "No confinement remains to be served on this sentence."

b. If clemency review results in modification of the sentence, the OEGCMJ will, except as otherwise provided in paragraph 414 of this instruction, issue a supplementary courts-martial order implementing such action. The OEGCMJ will provide the offender with a copy of that action. (The OEGCMJ should send the copy to the most current address known, and is on notice of that address if the offender is still serving sentence to confinement either in a naval brig or the FBOP or is on parole at the time of the supplementary courts-martial action.)

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c. Where final clemency action taken under this instruction results in the suspension or remission of a punitive separation, thus under the offender's restoration to duty, administrative discharge proceedings may not be initiated against the offender except for cause related to matters separate and distinct from those involved in the courts-martial for which the clemency action was taken. "Matters separate and distinct" is misconduct on the part of the offender that occurred subsequent to the date of the convening authority's action or of which the NC&PB was not aware at the time it took its action. This does not prohibit the initiation of vacation proceedings and action taken under R.C.M. 1109(e), where appropriate, nor does it prohibit the discharge of the offender if that discharge is in accordance with his/her service record.

d. Should the NC&PB promulgating order direct that the offender be afforded an opportunity to participate in a treatment/rehabilitation program which the offender had waived prior to the NC&PB action, the OEGCMJ will reoffer the program to the offender.

e. All clemency actions ordered under this instruction are effective this date of the letter issuing NC&PB/SECNAV decision.

f. In those cases where clemency action remits confinement to the extent the offender's sentence to confinement has been completed but judicial review has not been completed, the OEGCMJ, or other proper authority, should ensure that the offender has valid appellate leave orders with instructions relating to the obtaining/retaining of a valid AFIC. See paragraph 516h.

413. Unsatisfactory Performance/Conduct. Unsatisfactory performance/conduct on the part of an offender which is sufficiently serious to be made a matter of official record and which becomes known after submission of the post-trial progress report, but prior to receipt of final action relating to clemency or prior to the issuance of the supplementary courts-martial order implementing a grant of clemency, will cause the following:

a. The commanding officer, the convening authority or the OEGCMJ will, without delay, report the circumstances of the unsatisfactory performance/conduct to the President, NC&PB. The report will include recommendations to grant or deny clemency or reconsider any previous NC&PB/SECNAV decision to grant clemency.

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b. In the event clemency has been directed by NC&PB/SECNAV, the commanding officer will also notify the OEGCMJ of the unsatisfactory performance/conduct. The OEGCMJ will withhold execution of the clemency action that has been directed, pending notification, reconsideration, and final determination.

c. The OEGCMJ who withholds clemency action due to an offender's unsatisfactory performance/conduct will make an immediate report to that effect to the President, NC&PB. Once the clemency action has been withheld, the OEGCMJ may not thereafter execute any part of the clemency action or execute a punitive separation until the decision of the NC&PB/SECNAV has been reconsidered and a final determination has been promulgated by the NC&PB.

d. When clemency has been withheld, a field service record or service record book entry will be made.

e. The offender will be notified by the commanding officer or the OEGCMJ of any NC&PB/SECNAV decisions involving clemency, including the withholding of clemency granted. When an offender is notified that clemency action ordered by the NC&PB/SECNAV is being withheld, the offender will also be advised of the reasons for the withholding and that he/she may submit matters to the NC&PB for its consideration in determining the status of its previous order of clemency.

f. Upon receipt of the OEGCMJ report notifying the NC&PB of the withholding of clemency, the NC&PB will promptly notify the offender of the date the NC&PB will reconsider its clemency action/recommendation, and provide the offender with the opportunity to submit, via the OEGCMJ, within a reasonable period of time, matters he/she desires the NC&PB to consider with regard to the alleged unsatisfactory performance/conduct. The NC&PB will then reconsider the clemency action/recommendation in light of the report of the OEGCMJ withholding the clemency action and matters presented by the offender. The NC&PB/SECNAV may reaffirm, modify or withdraw the clemency order previously issued.

414. Liaison. Authorities desiring to exercise clemency in an offender's case pursuant to their authority under Article 74, UCMJ, or authority delegated pursuant to section 0158 of the JAGMAN (other than the exercise of such authority in accordance with the issuance of a supplementary courts-martial order as provided within this instruction) will coordinate with the NC&PB. Liaison will be accomplished for cases involving enlisted offenders as follows:

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a. An OEGCMJ under authority delegated in section 0158 of the JAGMAN who takes action to remit or suspend any part or amount of a sentence that includes a punitive separation or confinement of 12 months or more will ensure that a copy of the official action is forwarded, without delay, to the President, NC&PB, with one copy to the CMC (JAM) or BUPERS (PERS 83), as appropriate.

b. In order to avoid inconsistencies or conflicts, any OEGCMJ who plans to grant clemency, as described in the above paragraph, will determine whether or not the case is pending review by the NC&PB within the following 3 months.

(1) In the event the case is not scheduled for initial clemency review or annual review within the following three months, and a special review has not been directed as provided in paragraph 406, the OEGCMJ will exercise clemency as deemed appropriate and forward a copy of the action taken to NC&PB.

(2) If the review is scheduled within the following three months, the OEGCMJ will notify the President, NC&PB, that clemency action is being considered in the case. Upon receipt of such notification the President, NC&PB, will delay NC&PB clemency review of the case until receipt of the OEGCMJ action in the case. The OEGCMJ will promptly forward to NC&PB a copy of the issued action (supplementary courts-martial order).

415. **Execution of Punitive Separations.** Approved unsuspended separations of offenders will not be executed until the initial mandatory clemency review, held in accordance with this instruction, has been completed or waived, and judicial review is completed in accordance with Article 71, UCMJ. Upon completion of judicial and clemency review, the OEGCMJ, or other proper authority, will issue a supplemental courts-martial order ordering the execution of the punitive discharge. A copy of that supplemental courts-martial order will be provided the NC&PB and CMC(MHC) or CHNAVPERS (PERS-84) and (Naval Appellate Leave Activity), as appropriate.

PART V

PAROLE POLICY AND PROCEDURES

501. Jurisdiction. All cases within the jurisdiction of SECNAV (NC&PB) as defined in paragraph 304 and hereinafter qualified:

a. Naval Service Offenders. Naval service offenders (and other persons subject to the UCMJ who are tried by Navy and Marine Corps courts-martial) serving confinement in naval brigs as a result of an approved sentence imposed by courts-martial whose sentence includes confinement for 12 months or more and who have served at least one-third but not less than 6 months of their sentence to confinement are eligible for a parole review hearing under this instruction.

b. U.S. Coast Guard Offenders. Under references (m) and (n), NC&PB shall review the cases of U.S. Coast Guard offenders who are eligible for parole in accordance with the same policy and procedures that apply to naval service offenders.

c. Naval Service Offenders Serving Courts-Martial Sentence While in the Custody of Federal (FBOP), State or Local Authorities

(1) Naval service offenders in the custody of the FBOP who are in that custody as a result of transfer from a naval brig for the purpose of serving a sentence to confinement imposed as the result of a court-martial sentence are not within the parole authority of SECNAV and are excluded from the provisions of this instruction as they relate to parole. For the purposes of this instruction, SECNAV's lack of parole authority over naval service offenders in the custody of the FBOP is contingent upon the continued existence of the U.S. Parole Commission.

(2) Upon the expiration of the authority of the U.S. Parole Commission, SECNAV's parole authority over naval service offenders in the custody of the FBOP for the purpose of serving confinement imposed as the result of a court-martial sentence is reinstated, unless otherwise directed, and parole status of the offender will be determined by the NC&PB in accordance with the same parole consideration as naval service prisoners serving their sentences to confinement in naval brigs.

(3) Naval service offenders in custody of state or local authorities serving a sentence to confinement imposed as the result of a court-martial may or may not be within the parole

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authority of SECNAV depending upon the agreement arranged between such authorities and SECNAV upon transfer/detention of the offender. If SECNAV does have parole decision-making authority over the offender, then the provisions of this instruction apply; if SECNAV does not, then the offender is excluded from consideration of parole under the provisions of this instruction. Each case will be determined on an individual case basis.

(4) NC&PB will liaise with FBOP, state or local authorities to ensure known victims are informed about the status of offenders (e.g., date of parole hearing), as required by reference (s).

d. Naval Service Offenders Confined in Federal, State or Local Confinement Facilities Not Serving Court-Martial Sentence. Naval service offenders in the custody of federal, state or local authorities not serving sentence to confinement imposed as result of court-martial sentence, but who have a military detainer placed upon them requiring their return to the custody of the naval service upon release from federal, state or local custody are not within the jurisdiction of the NC&PB until the date of their return to military custody. Upon return to military custody, NC&PB will ensure victims are kept informed (e.g., date of parole hearing), as required by reference (p).

e. The parole review process begins when the offender is eligible for parole and submits a request for parole.

f. Offenders whose convening authority actions or sentences have been set aside by the U.S. Navy-Marine Corps Court of Military Review, the U.S. Court of Military Appeals, or other appropriate courts of law are not within the parole jurisdiction of the NC&PB regardless of the fact their request for parole was submitted prior to the judicial action. See paragraph 523e.

g. Offenders who are granted and accept parole remain under the control of the commanding officer of the naval brig from which they are released or such other facility or command as may be directed by CMC or CHNAVPERS, respectively, until the expiration of the full term of the sentence to confinement without credit for good time or extra good time.

502. Policy and Objectives. Parole is a form of correctional treatment. It is the principal means of conditional release from the naval brig setting used by the naval service to reintegrate the offender into the community as a law-abiding citizen after

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the offender has served at least one-third of the approved sentence to confinement. Naval parole functions as a means for individualizing the naval corrections process and offering incentives for the offender to reform, while enabling the naval service, society in general and their authorities to retain custody through supervision. Parole entails supervision of the offender in the community with concern paid not only to the needs of the offender for successful reintegration into the community but also to the community's needs in terms of protection. Parole particularly recognizes the need for a gradual and more structured return to the community with the opportunity to provide services and to monitor behavior to help ensure successful reintegration. Parole serves as a means of retaining control over an offender beyond the minimum release date for the purpose of treatment and rehabilitation. Parole is a means by which the naval service can ensure an offender receives and participates or continues to participate in treatment and rehabilitation programs designed to help prevent reoffending. Parole also provides the offender with a daily routine that serves as an example of the law-abiding life style expected by the community/society. Decisions whether to release an offender on parole will be based on an evaluation that the offender has the potential for successfully returning to society and functioning as a responsible, self-reliant and law-abiding citizen. The objectives of parole which the NC&PB will consider in determining the parole status of each offender eligible for parole are:

- a. A tool for correctional officers within naval brigs to use in motivating offenders toward constructive activities and responsible behavior;
- b. A means of alleviating residual disparity in dealing with offender changes over time;
- c. A source of hope for that group of potentially desperate offenders serving extremely long or life sentences;
- d. A post-release supervised assistance for offenders in their efforts to reintegrate themselves into society;
- e. A method of public protection through community surveillance that allows for removal of the parolee from the community should he or she violate the conditions of release; and
- f. A correctional tool used for those offenders where further confinement serves no further useful purpose, but supervised treatment and rehabilitation is required to lessen the potential for further irresponsible/criminal behavior.

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503. Criteria for Parole Eligibility. An offender is eligible for release on parole when:

a. The offender has an approved sentence that includes an unsuspended punitive separation, has been administratively discharged (includes those who will not be restored to active duty because their term of obligated service has expired) or retired; and

b. The approved unsuspended sentence or aggregate sentence to confinement is 12 months or more and the offender has served one-third of the sentence to confinement, but not less than 6 months when the sentence includes confinement for less than 18 months and not more than 10 years when the sentence includes confinement for more than 30 years of life; and,

c. The offender requests parole.

d. With respect to an offender whose approved sentence includes confinement and a fine, and additional confinement for a specified period of time if the fine is not paid, parole eligibility will be based only on the basic term of confinement for the offender who willfully fails to pay the fine.

e. With respect to an offender whose finally approved sentence includes only a fine in addition to the punitive separation, but confinement has been properly ordered because the fine has not been paid, eligibility for parole shall be based on service of at least 6 months of the sentence to confinement and annually thereafter.

f. Offenders reconfined at the expiration of an increment of parole who request to return to parole status shall be reviewed by the NC&PB on the next anniversary of the offender's clemency review eligibility date or sooner upon the recommendation of the commanding officer or the NC&PB's own motion.

g. Offenders reconfined under parole revocation proceedings will not normally be eligible for reparole until 1 year from the date the prior period of parole was terminated by reconfinement by military or civil authorities. The NC&PB may review a reparole request earlier than 1 year on its own motion or in response to a recommendation of the commanding officer.

504. Parole Eligibility Date

a. The parole eligibility date is the date at which the offender has served one-third of the sentence to confinement except:

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(1) If the sentence includes less than 18 months but at least 12 months confinement, the parole eligibility date is the date on which the offender has served 6 months of the sentence to confinement.

(2) If the sentence includes more than 30 years confinement or confinement for life, the parole eligibility date is the date on which the offender has served 10 years of the sentence to confinement.

b. Pretrial confinement and judicially ordered administrative pretrial confinement credits count for determination of an offender's parole eligibility date; periods of officially approved deferment or suspension of a sentence to confinement do not count toward establishment of the offender's parole eligibility date.

c. When exceptional circumstances exist or for other good cause, SECNAV may advance an offender's parole eligibility date, except for those ineligible for parole because they are confined under a death sentence.

d. Good conduct abatement and employment abatement are excluded in computing eligibility for parole.

e. The parole eligibility date of a parolee returned to confinement as a parole violator will be no earlier than 12 months from the date of the parolee's return to military control.

505. Procedures for Determining Status of Parole Requests

a. Prior to becoming eligible for parole, each offender should execute a Parole Statement (NAVSOP 1640/3). All sections of the form must be completed if the offender requests parole; only sections I, II and IV of the form must be completed if the offender does not request parole.

b. If the offender does not request parole and waives clemency review, the commanding officer will forward the Parole Statement without a post-trial progress report to the NC&PB within 30 days of the offender's parole eligibility date.

c. If the offender does not request parole and does not waive clemency review, the absence of a parole request may be noted in the post-trial progress report submitted for the annual clemency review. NC&PB will presume the offender does not request parole whenever it fails to receive a request for parole from the offender.

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d. Completion of the Parole Statement is the means by which naval offenders notify the naval brig/NC&PB authorities of their present intent to request parole if or when they are parole eligible. Upon receipt of the Parole Statement that reflects an offender's intent to request parole, the naval brig will ensure the offender understands the requirements of an adequate parole plan.

e. Offenders requesting parole are responsible for their own parole plans. They will be encouraged to take the initiative in developing parole plans which fit their particular circumstances and meet their special needs, particularly plans that address individual and group therapy/counseling programs dealing with offenders whose convictions are the result of violent acts, particularly sex offenses, or substance abuse/dependency. If an element of a parole plan involves some cost, the offender must plan to pay the cost personally or arrange for funding from other sources; the Department of the Navy does not fund parole plans with the exception of VA inpatient alcohol/drug treatment prior to discharge.

f. To the extent practicable, the commanding officer will provide each eligible offender who intends to request parole with the necessary assistance to develop a satisfactory parole plan. Offenders with special problems may need extra assistance to incorporate outpatient therapy, inpatient treatment, halfway house programs, or other unique elements into their parole plans. Also to the extent practicable, the commanding officer will verify, to the extent possible, the element of the offender's parole plan, including the credentials/qualifications of the professional involved in any outpatient/inpatient programs. U.S. Probation Officers will not normally be asked to establish or verify elements of an offender's parole plan prior to approval of parole per this instruction.

506. **Parole Request.** An offender eligible for parole who desires to request parole, will submit their request with an adequate parole plan in accordance with the schedule set forth in paragraph 507. The parole request includes a statement from the offender to SECNAV requesting release from confinement under supervision of parole, reasons the request should be granted, and the offender's proposed plan for successful reintegrating into society if released on parole. An adequate parole plan includes, at a minimum, a valid tender of residence and employment. An offender should consult with his/her corrections counselor for suggestions as to other proposals that might be included, such as restitution plans, substance abuse treatment, individual

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counseling/therapy that will assist the offender in dealing with problems identified as contributing to the commission of the offense(s) of which he/she was convicted or putting him/her at risk for reoffending.

a. Employment Requirement. Unless waived by NC&PB, the offender must submit satisfactory evidence that he/she will be engaged in a reputable business or occupation upon release from confinement or the offender may not be released on parole. Employment requirements for release on parole are met when:

(1) A responsible prospective employer has executed a tender of employment; or,

(2) A recognized trade union or similar organization has stated that, subsequent to release on parole, the offender will be considered a member of the organization in good standing and that, through the normal functions of the organization, the offender will be afforded employment rights and assistance equal to that furnished other members in good standing.

(3) A reputable prisoners' aid, welfare or employment organization has given assurance that it will assist the offender in obtaining employment after release on parole and will assure the parolee's livelihood until permanent employment is obtained.

(a) Because of the heavy burden already carried by prisoners' aid organizations and similar agencies, the use of these agencies will be limited to those cases in which such action appears absolutely essential to a suitable release plan.

(b) The United States Employment Service and similar state agencies will not be considered in the same category as prisoners' aid associations and other welfare organizations, since such Federal and state employment agencies are not always in a position to obtain or offer assurance of employment for individuals prior to release from confinement and prior to personal interview.

b. Waiver of Employment Requirement. The NC&PB may waive the requirement for a verified, written tender of employment as a prerequisite for parole under any one or more of the following conditions:

(1) Every possible effort and all available resources for obtaining employment before release on parole have been exhausted without success, but there is a reasonable belief that the

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parolee will be able to obtain suitable employment after he/she is actually released on parole by virtue of his/her presence in the job market.

(2) On-the-job training or schooling has been approved under the laws authorizing government-sponsored benefits.

(3) The parole plan includes evidence of adequate means of support and sufficient funds to pay living and education expenses and the offender requesting parole has been accepted by an accredited educational institution.

(4) The parole plan involves release on parole via 30 days inpatient treatment at a Veterans Administration Hospital.

(5) The parole plan involves long term hospitalization, residential treatment or participation in a halfway house type program.

(6) In the judgment of the NC&PB, circumstances warrant release on parole before suitable employment is obtained.

(7) Adequate financial support exists for the offender without the offender being a financial burden on society or the offender's family and the offender will be involved in a worthwhile endeavor approved by the NC&PB.

507. **Schedule for Submission of Parole Requests**

a. Offenders who are eligible for, and desire, parole may request parole up to 6 months before their parole eligibility date or any time thereafter.

b. Parole review hearing documents concerning initial parole requests, including endorsements, will be submitted to the NC&PB within 60 days of the submission of the parole request.

c. Parole review documents for second and subsequent NC&PB parole reviews shall be submitted in conjunction with submissions required for annual clemency review. See paragraph 408.

d. Submission of an offender's parole request will not be discontinued or delayed because a satisfactory parole plan has not been developed by the offender. In such instances, the tentative parole plan representing the best efforts of the offender will be used in processing the request for parole.

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508. Procedures for Parole Hearing Before Disposition Board.

The procedures for the parole hearing are:

a. The offender requesting parole will be given at least 15 days notice of the time, place and purpose of the hearing.

b. The offender requesting parole will have access to the information pertaining to his or her case which the disposition board, or other agent of the NC&PB will consider. Such access will be conditioned upon the safety of persons whose statements or opinions are under consideration, the necessities of prison security, and the constraints set forth in paragraph 320.

c. The offender requesting parole is not entitled to a lawyer, but may be represented by another offender or member of the staff. The function of the representative is to offer a statement at the conclusion of the hearing and to provide additional information as may be requested by the presiding officer, hearing officer, or other agent of the NC&PB. The Military Rules of Evidence do not apply, but the presiding officer, the hearing officer, or other agent of the NC&PB shall limit or exclude irrelevant or repetitious statements.

d. Each parole applicant is entitled to a personal hearing before an agent of the NC&PB. The disposition board of the brig or the U.S.D.B. is authorized to function as that agent or the agent may be specifically designated by the NC&PB.

e. The Disposition Board will make recommendations for the grant or denial of parole and articulate with specificity the reasons for the recommendation.

f. If the Disposition Board recommends the NC&PB grant parole, it should also make recommendations, where appropriate, for any special conditions of parole it believes would assist the offender in his/her reintegration into the community and better ensure the protection of society.

509. Submission and Endorsement of Post-Trial Progress Reports for Parole Review of Offenders in Naval Brigs

a. When an offender confined in a naval brig requests parole, the commanding officer will:

(1) Forward a complete post-trial progress report, as required for clemency review per paragraph 409c, attaching thereto the offender's parole statement. Special attention shall

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be given to the factors set forth in subparagraphs 409c(2), (3) and (6) as they relate to an assessment of the offender's potential for success on parole. Additionally, the psychiatrist, clinical psychologist or clinical social worker will summarize the impact of environmental factors on the offender with special emphasis on the environment to which the offender plans to return. Psychopathology and substance abuse or dependency of the offender as well as in those who will be part of the parole plan must be explored. Suggestions about possible conditions of parole (psychotherapy, etc.) must be made. Addenda, if appropriate, must be made for any requests for parole submitted subsequent to the initial request.

(2) Ensure information concerning an offender's marital status is correct. When divorce, common-law marriage, extra-marital relationships, or problem relationships exist, clarify them and evaluate their impact on the parole plan.

(3) Ensure that the individual's citizenship is accurately reflected in the post-trial progress report.

b. The CMC (JAM) or CHNAVPERs (PERS-83) shall:

(1) Review the post-trial progress report and other parole request documents provided by the NC&PB.

(2) Forward recommendations with supporting reasons to the NC&PB within 10 working days of receipt of parole request documentation. The NC&PB may presume CMC or CHNAVPERs concurrence with the commanding officer's recommendation when the CMC or BUPERS recommendation is not received by the date of the scheduled hearing.

510. Schedule for Parole Review Hearing by the NC&PB

a. The NC&PB will consider initial parole requests within 30 days of the parole eligibility date or as soon as practicable after receipt of the request.

b. If an offender's initial request for parole is denied, subsequent requests for parole will be reviewed by the NC&PB within 30 days of the anniversary of the clemency review eligibility date, except upon recommendation of the commanding officer, CMC (JAM) or CHNAVPERs (PERS-83), SECNAV, Director, NCPB, the President, NC&PB or the NC&PB on its own motion.

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Normally, application of the exception should be reserved for instances in which newly discovered substantially relevant information would alter a previous recommendation or when the offender's potential for success on parole has improved significantly and the next scheduled annual clemency review is too late for parole to be a viable option. See paragraph 403g.

c. Waiver of clemency review does not preclude submission of a request for parole.

511. **NC&PB Action on Parole Requests.** Upon receipt of an offender's request for parole and the post-trial progress report, the NC&PB shall review the offender's case file and all information relevant to the parole request, including the recommendations of the Disposition Board, the commanding officer and, as applicable, CMC or CHNAVPERS. After consideration of the case file, the recommendations, policy and objectives for parole set forth within this instruction, the NC&PB will:

a. Grant or deny parole.

b. Recommend, where appropriate, that the Secretary grant or deny parole.

c. Set the date that the offender shall be released on parole.

d. Set the conditions of parole.

e. In unusual circumstances, advance or recommend the advancement of the parole eligibility date of an offender.

f. Inform known victims of the NC&PB's action on an offender's parole request, as required by reference (p).

512. **Factors for Parole Decision-Making.** The NC&PB will consider the following non-inclusive factors in making a decision regarding an offender's request for parole:

a. Nature and circumstances surrounding the offense(s).

b. The approved sentence in relationship to the maximum imposable sentence and the sentences of other offenders imposable as a result of their commission of similar offenses under similar circumstances.

c. Customary range of confinement before release. See Appendix C.

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d. Mitigating, extenuating and aggravating circumstances, pre- and post-trial, including the current situation and events that have occurred since any previous hearing.

e. Risk to public safety; i.e., the protection and welfare of society.

f. Confinement record; i.e., attitude, performance, acceptance of status while in confinement, motivation.

g. Psychological profile, including age, education, marital and family status.

h. Need for special counseling/therapy programs not offered by the naval brigs.

i. Prior military and civilian history.

j. Future plans and relevant conditions in the community to which the offender desires to reside on parole.

k. Impact of the offense upon the victim.

l. Good order and discipline within the Service.

m. Offender's current status with law enforcement authorities, such as the presence of a detainer on an offender or the status of the offender as a foreign national does not automatically preclude parole.

n. Other matters as appropriate.

513. Denial of Requests for Parole

a. Reasons for Denial. The NC&PB, or SECNAV in those cases SECNAV has retained decisional authority, will provide an offender who has been denied parole, and victims (reference (p)), written notification of the denial. The NC&PB or SECNAV must set forth the reasons for denial of parole if the offender has served confinement that falls within, or more than, the customary release range as determined by the severity offense rating and the salient factor score (Appendix C). Such information shall normally be forwarded to the offender via the commanding officer. Upon receipt of the notification of parole denial, the offender will sign and date the notification of parole denial. Reason(s) for denial of parole include, but are not limited to:

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(1) Release on parole at this time would depreciate the seriousness of the offense(s) and promote disrespect for the law.

(2) Due to the seriousness of the confining offense(s) and the short amount of time served on the sentence, a release on parole at this time would be premature.

(3) The retributive and deterrent portion of the sentence to confinement has not yet been served.

(4) Release would jeopardize the public welfare.

(5) Although the offender has reached his/her parole eligibility date, the nature of the confining offense(s) prevents release on parole because release would be premature in view of at least one of the following:

- (a) Weapon was involved in the offense(s);
- (b) Excessive force was involved in the offense(s);
- (c) Lack of remorse;
- (d) Denial of guilt if the offender pled guilty or confessed;
- (e) Serious juvenile record;
- (f) Rebellious, hostile, anti-social attitude in civilian or military confinement;

(6) Parole would be premature in view of the offender's history of:

- (a) Article 15, UCMJ, punishments for _____;
- (b) Crimes related to alcohol abuse;
- (c) Crimes related to drug abuse;
- (d) Assaultive behavior.

(7) Motivation/attitude towards confinement is poor, marginal or unsatisfactory as indicated by forfeiture of good conduct time; disciplinary and adjustment boards; unfavorable reports; lack of program involvement or other identified problems.

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(8) Additional institutional treatment is required to enhance the offender's capacity to lead a law-abiding life such as:

(a) Participation in Alcoholics, Narcotics or Emotions Anonymous, et al;

(b) Participation in an alcohol, drug, or sex offender individual/group counseling/therapy program;

(c) Improve work performance;

(d) Other specified program.

(9) Parole plan was incomplete because it lacked assured residence, verified tender of employment, individual/group therapy program treatment plan, or other specified requirement.

(10) Current custody level is inappropriate to be considered a good risk for parole because the offender was:

(a) Recently denied elevation of custody level;

(b) Recently elevated but needs further observation/evaluation prior to making an adequate assessment of parole potentiation.

(11) For decisions exceeding the lower limit of Category 8 severity offense rating by more than 48 months, the pertinent aggravating case factors considered are to be specified in the reasons given (e.g., homicide was premeditated; or committed during the course of another felony; or that extreme cruelty or brutality was demonstrated).

(12) Other specified reasons.

514. Appeal of Denial of Parole Request

a. NC&PB Denial. Offenders denied parole by the NC&PB may file a written appeal of that decision to the Director, NCPB, 801 North Randolph Street, Suite 907, Arlington, Virginia 22203-1989. The appeal must be submitted to the commanding officer within 30 days of receipt of written notification that parole has been denied. No documents are to be attached to the appeal unless the documents contain new information and materials not already in the possession of the NC&PB. Commanding officers, except the Commandant, USDB, will promptly forward all appeals

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with their recommendations and supporting reasons via the OEGCMJ over the offender to the Director, NCPB. The Commandant, USDB, will promptly endorse with recommendations and forward all parole appeals directly to the Director, NCPB. The Director, with the advice of legal counsel, may, after review of the offender's appeal, the case file held by NC&PB and the NC&PB decision, affirm, modify or reverse the decision or order a rehearing by the NC&PB. The Director's decision will be issued within 60 days of receipt of the appeal and is final.

b. SECNAV Denial. Offenders denied parole by SECNAV have no right to appeal. A decision by SECNAV is final.

515. Report of Unsatisfactory Performance/Conduct -- Parole Rescission Proceedings

a. Unsatisfactory Performance/Conduct Defined. Conduct or performance on the part of an offender that is sufficiently serious to be made an adverse matter of the offender's official record is unsatisfactory, and if it becomes known after submission of the post-trial progress report or appeal of a denial of parole, but prior to release on parole or receipt of action on appeal of denial of parole, shall be the cause of action as follows:

(1) Report. The commanding officer will report the nature and circumstances surrounding the unsatisfactory performance/conduct to the President, NC&PB, immediately. The report will include in as much detail as possible, the facts and circumstances of the offender's unsatisfactory performance/misconduct and a copy of any relevant report of investigation or other documents in support of the allegation of unsatisfactory performance/conduct. The report will include a recommendation for appropriate disposition of the offender's case. The offender shall be notified of the unsatisfactory performance/conduct and the recommendation of the commanding officer.

(2) If parole has not been previously directed, the offender may submit a written statement for forwarding to the President, NC&PB. The statement must be submitted within 5 days of the report of unsatisfactory performance/conduct submitted by the commanding officer.

(3) In reviewing the offender's request for parole, the NC&PB will consider all information relating to the unsatisfactory performance/conduct, including any written statement submitted by the offender, along with all other information in the offender's NC&PB file.

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b. Withholding Release on Parole. If parole has been previously directed, but release has not yet been effected, upon receipt of facts sufficient to cause a report of unsatisfactory performance/conduct, the commanding officer shall withhold release pending the initiation of rescission proceedings and a final determination by the NC&PB.

c. Parole Rescission Proceedings. Upon receipt of information of unsatisfactory performance/conduct by the offender and NC&PB's determination that rescission of parole is not probable, NC&PB will direct the offender's release on the effective date of parole. If NC&PB determines that rescission is probable, rescission proceedings will be initiated. At these proceedings the offender has a right to a personal appearance hearing before a single examiner, normally an officer in the grade of O-4 or higher or a civilian of equivalent grade, appointed by the commanding officer. The rescission proceedings include the following procedures:

(1) The offender will be provided written notice of the alleged unsatisfactory performance/conduct and his/her rights at the rescission proceedings at least 48 hours prior to the hearing.

(2) At the hearing, the offender has the right to present documentary evidence, including affidavits, from witnesses who cannot be present, as well as the right to call and cross-examine witnesses limited by consideration of the safety of persons appearing as witnesses, the necessities of prison security, the fact that such witnesses must be notified and secured by the offender at the offender's own expense, and the constraints of paragraph 320.

(3) The examiner will forward findings of fact, including evidence relied upon, directly to the President, NC&PB. The examiner will include one of the following recommendations: rescind the grant of parole; delay its effective date up to 90 days; parole on the effective date.

(4) Upon taking final action to approve parole on the effective date, delay the effective date of parole or rescind parole, the NC&PB will inform the offender of the evidence relied upon and the reasons for the action in writing.

d. Parole rescission actions are final and not subject to appeal. The offender will be provided written notice of the final parole rescission action by NC&PB along with the reasons for the rescission.

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516. Judicial Action Prior to Release on Parole. If the commanding officer is in receipt of a Certificate of Parole, but prior to releasing the offender on parole, the offender's convening authority action or sentence is set aside by the judicial review process, the commanding officer shall notify NC&PB which will then issue an action staying the offender's release on parole pending notification of the results of the action ordered by the appellate courts.

517. Parole Release Policy and Procedures. Upon receipt of a Certificate of Parole (NAVSO 1640/4), the commanding officer will release the offender on the effective date of parole or as soon thereafter as all prerelease conditions have been completed. The conditions that must be completed prior to an offender's release on parole are:

a. Continued validity of the parole plan approved by the NC&PB and the U.S. Probation Officer. If the approved parole plan has undergone significant alterations prior to the offender's release on parole, the commanding officer shall not release an offender on parole until the NC&PB approves the altered parole plan.

b. Explanation of the conditions of parole to the offender by the commanding officer or designee.

c. Execution of a written agreement by the offender accepting the specific conditions of parole. All copies of this agreement will be signed by the offender and witnessed by a commissioned officer or civilian employee (GS-6 or above). The parole agreement consists of the parole letter, the Certificate of Parole, including the guidelines and conditions on the reverse side of the Certificate of Parole, and any addenda, if applicable. The offender will be instructed to execute and return the notification of Arrival of Parolee (NAVSO 1640/6) or equivalent upon arrival at the parole destination.

d. Delivery to the offender of the accurately completed original Certificate of Parole and parole agreement and appellate self-executing leave orders effective the date of the offender's release from parole due to expiration of the offender's term of confinement, including execution of required signatures and insertion of correct release date. (If an original Certificate of Parole and parole agreement have not been received on the date the offender has been directed to be released on parole, the commanding officer will notify the President, NC&PB, who will FAX

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a signed copy of the parole agreement to the commanding officer who will then have the FAXed copy Xeroxed. The Xeroxed copy will then be stamped ORIGINAL and parole release procedures continued.) The appellate leave orders will instruct the offender on how to obtain/retain a valid Armed Forces Identification Card (AFIC) if the offender has not been discharged from the naval service; i.e., in receipt of a DD 214.

e. Take front and side view identification photographs of the offender and furnish by a letter of transmittal a copy of the photographs along with signed copies of the Certificate of Parole and parole agreement to the U.S. Probation Officer and to CMC(MHC) in the case of Marine parolees.

f. Distribute copies of the Certificate of Parole and, if appropriate, the parole agreement in accordance with instructions appearing at the bottom of the certificate.

g. If appellate review under Article 71(c), UCMJ, has been completed, execute and deliver a discharge certificate to the offender at the time of release on parole.

h. If appellate review has not been completed, ensure that the offender possesses an AFIC, completed to show rank and expiration date at least three months subsequent to the parole release date. The AFIC shall be over stamped "Military Parole" in a manner similar to procedures used when an individual is placed on appellate leave ("Appellate Leave"). Identification cards for dependents will bear the same expiration date and notation. Instruct offenders that if the expiration date of their AFIC occurs before appellate review of their case has been completed, they may apply for a new AFIC at the nearest military installation, reserve unit, or recruiter. Replacement AFIC shall bear the same notation as the first and an expiration date at least 3 months subsequent to the date of issue.

i. Instruct the offender to return all AFICs through the U.S. Probation Officer upon completion of appellate review, if appellate review is completed and they are discharged prior to their release from parole due to the expiration of the full term of their sentence to confinement.

j. Coordinate with the officer responsible for administration of the offender's service records to ensure preparation of the documents necessary to place the offender on appellate leave if appellate review has not been completed but the full term of the offender's sentence to confinement has been completed, as well as initiate documents necessary to discharge the offender when appellate review is complete. See paragraph 522.

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(1) Service records of parolees will be maintained at PSDs for the Navy and CMC(MHC) for Marines if appellate review has not been completed.

(2) After the parolees' discharge has been executed, service records of Navy parolees will be held at the consolidated brig until full term expiration date at which time the record will be retired. For Marine parolees, CMC(MHC) will hold service records until full term expiration date.

(3) If sentence to confinement of the parolee is completed due to the expiration of the full term of the sentence prior to completion of appellate review, the service record will be transferred to Navy Appellate Leave Activity (NALA) for Navy and remain with CMC(MHC) for Marines.

k. Ensure that the offender has the address of the uniformed services medical treatment facility closest to the offender's parole destination, if the offender has not been discharged or dismissed at the time of release on parole.

l. Ensure that an FBI Form I-12 (Wanted-Flash-Cancellation Notice) is prepared on each offender released on parole. This form provides a uniform means of filing requests with the FBI to ensure notice to the commanding officer of the arrest of an offender on parole by an apprehending officer who files prints with the FBI. The form will be annotated to indicate that the commanding officer, the NC&PB and the supervising U.S. Probation Officer are to be notified of any arrests reported to the FBI. Box 2 "Flash" of the form will be checked and all available information requested on the form for filing a flash notice will be provided. The form will be forwarded directly to the U.S. Department of Justice, Federal Bureau of Investigation (ATTN: Identification Division), Washington, DC 20537.

m. Ensure that the offender is given a medical examination as prescribed by instructions of the CHBUMED prior to release on parole. If a separation-type physical has been accomplished previously, the offender's health record will be reviewed by a medical officer assigned or attached to the medical treatment facility rendering primary medical care to the brig and the medical officer will accomplish a physical inspection of the offender to assure the absence of communicable disease. Medical officers will advise the commanding officer, in writing, of their findings and recommendations.

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n. Require the submission of a urine sample for each offender prior to release on parole for analysis in accordance with pertinent Navy or Marine Corps directives, as a service-directed urinalysis. (The commanding officer will determine whether Navy or Marine Corps regulations apply.) The sample will be collected as shortly before the offender departs as practicable and will be analyzed before the end of the third week of parole. A positive result will be reported to the President, NC&PB, by the most expeditious means available.

o. Furnish the offenders released on parole with transportation to their parole destinations per Joint Travel Regulations.

p. Provide the OEGCMJ with the offender's date of release from confinement on parole, the date parole expires, and the offender's address while on parole.

q. Known victims are informed, as required by reference (s).

518. Incremental Parole. The naval service system of parole normally involves six discrete 30 day increments of parole followed by parole to the full term release date.

a. Parolees who comply with all parole conditions during one 30 day period of parole will be granted a follow-on period of parole.

b. A parolee who does not comply with all parole conditions during one 30 day period of parole may be denied a follow-on period.

c. Each increment is a discrete period of parole which ends on a specified date. Parolees do not accrue a vested interest in their continued conditional liberty until granted parole to their full term release date.

d. An offender on incremental parole who is not granted parole to expiration of full term date is not entitled to a parole revocation hearing because parole has not been revoked. The parolee is credited with the incremental period(s) for purposes of confinement served and does not lose the good time or extra good time earned prior to release on parole.

519. Supervision of Parolees

a. The NC&PB coordinates with appropriate authorities within the U.S. Probation Office, requests its assistance to investigate

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parole program plans, and oversees the supervision of offenders paroled under the provisions of this instruction.

b. If NC&PB directs the release of an offender to parole under the supervision of a U.S. Probation Officer, the parolee must meet the conditions of parole set forth in the Certificate of Parole and parole agreement as well as any reasonable requirements directed by the U.S. Probation Officer.

c. All communications to the parolee will be addressed to or through the U.S. Probation Officer supervising the parolee, or other designee of the NC&PB.

d. The U.S. Probation Officer may authorize temporary (up to 20 days) leave for travel outside established parole limits and within the continental United States. The U.S. Probation Officer may extend or further restrict parole limits as required for the adjustment and supervision of the parolee, but must advise the NC&PB of such action. Requests for travel outside United States territory must be submitted to the NC&PB for decision in advance of the proposed travel date.

520. Conditions of Parole. Before the commanding officer releases an offender on parole granted under the provisions of this instruction, the offender must, in writing, waive all good conduct and extra good time earned through the date of his/her release on parole and agree to abide by the conditions of parole set by the NC&PB. The general conditions of parole are:

a. The parolee shall report directly to the U.S. Probation Officer whose name appears on the Parole Certificate within 24 hours after arrival at the principal place of parole. If, in any emergency, the parolee is unable to get in touch with the U.S. Probation Officer or the U.S. Probation Office, the parolee shall communicate with the commanding officer of the naval brig from which he/she was released or the Parole Management Unit, NC&PB (for this purpose, collect calls to NC&PB are authorized).

b. The parolee will remain within the limits indicated by the Certificate of Parole unless permitted to leave the limits by written permission of the U.S. Probation Officer.

c. The parolee will not change residence or employment without prior permission of the U.S. Probation Officer or the NC&PB.

d. The parolee will promptly and truthfully answer all inquiries directed by SECNAV, NC&PB, his/her U.S. Probation Officer, and other military or civilian authorities.

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e. The parolee will immediately inform the NC&PB of the refusal or inability of the U.S. Probation Officer to act as U.S. Probation Officer and request appointment of another probation officer.

f. The parolee will not associate with persons of bad or questionable reputation, particularly persons with a criminal record, unless permission of the U.S. Probation Officer is obtained.

g. The parolee will conduct himself/herself honorably, work diligently at a lawful occupation, and support his/her dependents to the best of the parolee's ability.

h. The parolee will live at liberty without violating the law.

i. The parolee will not drink alcoholic beverages to excess; nor will the parolee purchase, possess, use or administer marijuana or narcotic or other habit-forming or dangerous drugs, unless prescribed or advised by a physician; nor will the parolee frequent places where such drugs are illegally sold, dispensed, used or given away.

j. The parolee will perform community service in an hourly amount specified by NC&PB. Performance of community service beyond the hours assigned as a parole condition will be considered in a positive manner by the NC&PB during its annual clemency review of the offender's case.

k. The parolee will abide by any other conditions set by the U.S. Probation Officer, including but not limited to: reporting to state or local authorities as required by state or federal law, refraining from possessing firearms or other dangerous weapons, etc.

l. The parolee will submit to searches of his/her person, as required by the U.S. Probation Officer.

m. The parolee will authorize the release of his/her military records by the NC&PB or the U.S. Probation Officer.

n. The parolee will participate in the required drug screening program established by the U.S. Probation Officer.

o. The parolee will abide by any other special conditions contained in addenda to the parole agreement which may be issued by the NC&PB. Special conditions of parole may include, but are not limited to:

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(1) The parolee shall not enter into any agreement to act as an "informer" or special agent for any law enforcement officer.

(2) The parolee found alcohol or drug dependent by NC&PB shall participate in an alcohol or drug treatment program which may include scheduled and unscheduled testing and examination to determine if the parolee has reverted to alcohol or drug usage.

(3) The parolee convicted of sex offenses or serious violent offenses, or parolees with serious mental or emotional problems will participate in inpatient or outpatient mental health programs as directed by NC&PB or the U.S. Probation Officer.

(4) The parolee shall reside, and participate, in a halfway house program, as instructed, until discharged by the U.S. Probation Officer or the NC&PB.

(5) The parolee shall establish, when appropriate, a payment plan by which fines are paid and restitution made.

521. Clemency Consideration of Parolees

a. Parolees are eligible for annual clemency review. The NC&PB will obtain a report of the parolee's conduct from the U.S. Probation Officer prior to conducting the annual clemency review. The provisions of this instruction regarding annual clemency review apply to the annual clemency review of parolee cases. Clemency requests from parolees are not required; however, a parolee may submit any matters pertinent to a clemency review.

b. The NC&PB will inform the parolee, in writing, via the U.S. Probation Officer, of the results of the clemency review, indicating the new termination date of parole supervision in the event the sentence to confinement is reduced. The NC&PB will also inform the commanding officer and the OEGCMJ of the results of the annual clemency review.

522. Change in Status. This paragraph applies to cases in which a punitive discharge or dismissal was adjudged and parole or supervised release commenced prior to completion of appellate review.

a. If the sentence to confinement of the parolee expires prior to completion of appellate review, the commanding officer responsible for the administration of the parolee's service records will:

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(1) Issue the appellate leave papers prepared at the time of release on parole and direct the member to report to the nearest military installation, reserve unit, or recruiter to surrender the AFIC annotated "Military Parole" and obtain a replacement card marked "Appellate Leave" under current instructions.

(2) Order the individual to an appropriate unit, if required. The individual may report in an appellate leave status provided such leave is granted under procedures established by the CMC or CHNAVPERS, as appropriate.

(3) Furnish the individual with instructions and any other information deemed pertinent to establish clearly the individual's status and obligations.

(4) Advise the individual of the address of the commanding officer of the unit to which the individual is assigned.

b. If appellate review is completed and the parolee's or supervised releasee's discharge is ordered executed before the term of confinement has expired, the commanding officer responsible for administration of the parolee's or supervised releasee's service records will:

(1) Confirm that the most recent medical examination satisfied the requirements prescribed by CHBUMED to discharge the parolee or supervised releasee or obtain a current medical examination as prescribed by BUMED instructions.

(2) Process the separation documents, including a Certificate of Release or Discharge from Active Duty (DD Form 214).

(3) Furnish the individual with instructions regarding the change in status and require return of the AFIC marked "Military Parole" or "Appellate Leave" which was furnished for use pending completion of appellate review.

523. Termination of Parole

a. By Expiration of the Term of Confinement (Completion of Sentence). Parolees complete parole and are released from supervision at the expiration of the full term or aggregate term of their sentence to confinement. The NC&PB will issue a Certificate of Release from Parole (NAVSO 1640/7) or its equivalent when parole is terminated in this manner.

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b. By Expiration of the Term of Parole. Parolees whose term of parole expires while they are in a parole status and whose parole is not extended shall, within 24 hours of that expiration, return to the naval brig from which paroled. Transportation costs incident to the return to military custody will be borne by the parolee. Parolees who fail to report within 24 hours become subject to apprehension as escapees and prosecution under the UCMJ. If the parolee is an incremental parolee and the NC&PB does not extend parole, parole terminates at midnight of the date specified in the parole agreement. At that time, the parolee is to report within 24 hours of the expiration of the term of parole to the naval brig from which the parolee was released on parole or as otherwise designated by the NC&PB via the parolee's U.S. Probation Officer. Upon receipt of information that the parolee has not reported in accordance with the termination of parole requirements, the NC&PB will notify CMC(MHC) or BUPERS (PERS-83) who will initiate action to have the parolee taken into military custody, if the offender is not already being held by federal, state, local or military authorities. A copy of any warrant will be sent to the parolee's U.S. Probation Officer and the naval brig from which the parolee was released on parole and to which the parolee was ordered to return upon termination of parole.

c. By Suspension. Suspension of parole interrupts the sentence, unless the parolee is reconfined. A parolee who is not confined during a suspension of parole is not entitled to confinement credit for the period of the suspension; however, the NC&PB may authorize full or partial credit retroactively when it either revokes parole or rescinds the suspension and reinstates parole. Suspension of parole for a parolee who is permitted to remain at large shall not relieve the parolee of the requirements to abide by the conditions of parole.

d. By Revocation. The NC&PB may revoke parole if the parolee's behavior warrants return to confinement and the necessary due process rights are afforded to the parolee during the revocation process. See Part VI. In appropriate circumstances and upon the request of the parolee, the NC&PB may defer executing the revocation for a period of time normally not exceeding one year. If, during the period of this deferment, the parolee commits any further violations of a condition of parole, the NC&PB may cancel the deferment, execute the revocation, and reconfine the parolee upon notice to the parolee and without further proceedings. Parolees who have not been reconfined pending parole revocation proceedings will, within 24 hours of receiving notification of the revocation of their parole from

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their U.S. Probation Officer, return to the naval brig from which paroled. Transportation costs will be borne by the parolee. Parolees who fail to report within 24 hours become subject to apprehension as escapees and prosecution under the UCMJ.

e. By Judicial Action. Because parole is a conditional release from an approved sentence to confinement, the setting aside of a convening authority action or the sentence under judicial review nullifies the existence of the approved sentence to confinement and thus nullifies the basis of parole. In such a circumstance, the OEGCMJ or the NC&PB will notify the offender in writing through the offender's U.S. Probation Officer that his/her parole is being held in abeyance and that orders will be forthcoming from proper authorities. Transportation costs incident to the parolee's return to duty will be borne by the United States. Parolees who fail to follow the orders of those proper authorities are subject to apprehension and prosecution under the UCMJ.

PART VI

PAROLE REVOCATION POLICY AND PROCEDURES

601. Jurisdiction. Parolees and incremental parolees remain under the jurisdiction of the SECNAV(NC&PB), the OEGCMJ and commanding officer of the offender at the time the offender was paroled from the naval brig, or such other OEGCMJ as may be designated by proper authority (CMC or CHNAVPERs), until the expiration of the full term of the sentence to confinement without credit for good time (abatement) or extra good time allowance.

602. Termination or Suspension of Parole

a. Upon receipt of information from the offender's U.S. Probation Officer that reason exists to believe that conditions of parole have been materially violated by the offender, the NC&PB will determine whether parole should be terminated or suspended. The decision to terminate or suspend will be based upon written information expeditiously transmitted to the NC&PB that relates the circumstances surrounding the alleged violation(s).

b. Upon receipt of information that alleges that conditions of parole have been materially violated by a parolee not on incremental parole, the NC&PB shall promptly notify the parolee of the alleged violation(s) of parole, suspend parole and initiate parole revocation proceedings if it believes that the conditions of parole probably have been materially violated. If suspension of parole is ordered and if the NC&PB determines that it is necessary to assure the presence of the parolee, to protect the offender, or to ensure the public safety pending determination of the parolee's status, it will authorize the issuance of a warrant and direct appropriate authorities to initiate action to have the warrant executed and the parolee taken into military custody if the offender is not already being held by federal, state, local or military authorities. A copy of any warrant will be sent to the parolee's U.S. Probation Officer and the naval brig from which the parolee was released on parole and was ordered to return upon suspension.

c. Known victims will be kept informed of the offender's status (e.g., parole, revocation hearing, offender's parole terminated, suspended, modified, reinstituted, etc.), as required by reference (s).

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603. Preliminary Interview

a. Purpose of the Preliminary Interview. The primary purpose of the preliminary interview is for the officer conducting the preliminary interview to obtain verified facts to determine:

(1) Whether or not probable cause exists to believe that the conditions of parole have been violated (conviction of a federal, state or local crime subsequent to release on parole and for which confinement is authorized punishment will constitute probable cause that the parolee has violated a condition of parole);

(2) Whether or not a parole revocation hearing should be conducted; and

(3) Whether or not the alleged parole violator should be confined pending the final decision to revoke or continue parole.

b. Officer Conducting Preliminary Interview. The preliminary interview will be conducted by a U.S. Probation Officer other than the one initially dealing with the alleged parole violator's case. Effort should be made to conduct the preliminary interview as soon as reasonably possible following receipt of the order to suspend parole. The U.S. Probation Officer will:

(1) Prior to the parolee executing the Parole Violator's Hearing Request and prior to conducting the preliminary interview, advise the parolee of the parole violations that have been alleged and of the parolee's right to a preliminary interview and the parolee's rights at that interview.

(2) If the parolee requests a parole violator's hearing, advise the parolee of the time, place and purpose of the preliminary interview.

(3) Have the parolee execute the Parole Violator's Hearing Request (NAVSO 1640/9 (REV. 5-81)) in quadruplicate, unless the parolee waives such a hearing and elects revocation of parole. The original and one copy of the completed form will be forwarded to the NC&PB with the report of the officer conducting the preliminary interview, if applicable. One copy will be retained in local files and the fourth copy will be given to the alleged parole violator.

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c. Postponements. The U.S. Probation Officer conducting the preliminary interview may postpone the preliminary interview for a period up to 30 days if the parolee requests postponement to arrange for counsel and/or witnesses to appear at the interview. Requests by a parolee for postponement of a preliminary interview beyond 30 days will not be granted except at the discretion of the President, NC&PB.

d. Rights of Parolee at Preliminary Interview. Parolees have the following rights at a preliminary interview:

(1) To appear personally and speak on their own behalf, present letters and documents, and call individuals to testify about relevant information. In all cases, such individuals must be notified and secured by the parolee at the parolee's own expense.

(2) To confront and examine, on request of the parolee, persons who have given adverse information on which parole revocation may be based. Those persons are to be made available, at the parolee's expense, for questioning in the parolee's presence, unless it is determined by the officer conducting the preliminary interview that such persons would be subject to risk of harm if their identities were disclosed or the officer conducting the preliminary interview specifically finds good cause to deny confrontation and examination of these witnesses.

(3) To be represented at the preliminary interview by an attorney or by any other personal representative of the parolee's choice at no expense to the Government. The role of the parolee's personal representative is limited to the examination of witnesses, presentation of evidence and the offering of a statement on the parolee's behalf with regard to whether parole should be revoked. The parolee's personal representative is not permitted to enter objections or challenges, though such objections and challenges may be submitted in writing to the officer conducting the preliminary interview for attachment to the report of the preliminary interview.

(4) A preliminary interview is not required for a parolee who, subsequent to release on parole, has been convicted of a felony by federal, state, or local authorities unless otherwise directed by the NC&PB. When such a conviction is the basis of the probable cause finding, the U.S. Probation Officer will forward to the NC&PB information regarding the offense and conviction including certified copies of the conviction, recommendations regarding revocation of parole and a completed Parole Violator's Hearing Request.

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e. Recommendations. The officer conducting the preliminary interview will make one of the following recommendations:

(1) Probable cause does or does not exist to believe that the parolee violated the condition(s) of parole;

(2) A parole revocation hearing should or should not be held; and

(3) The parolee should or should not be confined pending the outcome of the parole revocation hearing.

f. Report of the Officer Conducting the Preliminary Review. Upon completion of the preliminary interview, the officer conducting the preliminary interview will prepare a written report, including a written summary of the interview with recommendations and supporting reasons concerning the revocation of parole. The original and one copy of the Parole Violator's Hearing Request and the report and recommendations of the officer conducting the preliminary interview will be forwarded to the President, NC&PB.

g. President, NC&PB, Review. The President, NC&PB, acting for the NC&PB, will review the Parole Violator's Request or its equivalent and the report and recommendations of the officer who conducted the preliminary interview or the nature and circumstances of the conviction which obviated the requirement for a preliminary interview, and any other relevant matters. If the President finds that probable cause exists to believe that the parolee violated a condition of parole, the President will direct that a parole revocation hearing be held. If the President finds that probable cause does not exist to believe that the parolee violated a condition of parole, the President will return the parolee to the original parole status. The President, NC&PB, will notify the parolee promptly of the decision regarding probable cause. If the President finds probable cause, he will also notify the parolee of the charge(s) upon which probable cause was found and the evidence relied upon. The President, NC&PB, will inform the NC&PB members of any probable cause decision at the next regularly scheduled hearing. By majority vote, the NC&PB may overrule the President's finding.

h. Release Notwithstanding Probable Cause. If the NC&PB finds probable cause to believe that the parolee has violated the conditions of release, reinstatement to supervision or release pending further proceedings may, nonetheless, be ordered if it is determined that:

(1) Continuation of parole revocation proceedings is not warranted despite the violations found; or

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(2) Incarceration pending further parole revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations;

(3) The parolee is not likely to fail to appear for further proceedings; and

(4) The parolee does not constitute a danger to himself/herself or others.

604. Parole Revocation Hearing. The purpose of the parole revocation hearing is to determine whether the parolee has materially violated the condition(s) of parole, and, if so, whether parole should be revoked. If the President, NC&PB, finds that probable cause exists to believe that a parolee has violated a condition of parole:

a. Unless the parole revocation hearing is waived in writing, by the parolee (NAVSO 1640/9 (REV 5-81) or its equivalent), the President, NC&PB, shall order a hearing and notify the parolee of the time, date and location of the hearing. The location of the hearing will normally be determined as follows:

(1) If the parolee has not been convicted of a crime while on parole, is not in the custody of federal, state or local authorities for an alleged crime committed while on parole and is not in the custody of military authorities under order of the NC&PB, the parole revocation hearing will be conducted near the place of the alleged violation (or one of the violations if more than one) unless the parolee requests return to the naval brig from which the parolee was paroled, in which case, the hearing will be held in that institution.

(2) If the parolee admits a violation of the parole agreement and is not being held by federal, state or local authorities for a crime committed or allegedly committed while on parole, the NC&PB may order the parolee returned for the parole revocation hearing to the naval brig from which paroled or such other place as may be designated by proper authority or the hearing may be held in close proximity to the location of the violation (or one of the violations, if more than one).

(3) If the parolee is in the custody of federal, state or local authorities for committing or allegedly committing a crime while on parole, the parole revocation hearing may be conducted in the area of custody to which the parolee is restricted, or the

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parolee may, upon termination of custody imposed by federal, state or local authorities, be returned for the hearing to the naval brig from which the parolee was paroled or such other place as may be designated by proper authority providing that undue delay does not result from that custody period.

b. The President, NC&PB, shall appoint a neutral and detached hearing officer to conduct the parole revocation hearing. The hearing officer normally will be an officer (O-3 or O-4) or civilian (GS-11 or 12) who is acquainted with the corrections or parole programs within the Department of the Navy.

c. The parolee will be given written notice of the finding of probable cause, the nature of the alleged violation, his/her rights to a parole revocation hearing, the purpose of a parole revocation hearing, the evidence upon which the parole revocation hearing is based and the options available to NC&PB.

d. The parolee has the following rights at the parole revocation hearing:

(1) The opportunity to review all evidence pertaining to the alleged violation, unless the hearing officer specifically finds good cause to deny access. The disclosure of the evidence upon which the parole revocation hearing is based must be made at least 10 days prior to the parole revocation hearing.

(2) The opportunity to be heard in person. The parolee may waive a personal appearance at a parole revocation hearing. The parolee may submit a statement in writing for consideration by the hearing officer notwithstanding the waiver of personal appearance.

(3) The opportunity to confront and to cross-examine adverse witnesses, unless the hearing officer specifically finds good cause to deny confrontation and cross-examination of the witnesses.

(4) The opportunity to present voluntary witnesses and documentary evidence in the parolee's own behalf. A parolee's request for witnesses will be made prior to the hearing and will be subject to the approval of the hearing officer. The hearing officer need not delay the parole revocation hearing if a witness requested by the parolee declines to appear or fails to appear at the hearing. The hearing officer may limit or exclude any irrelevant or repetitious witness. The attendance of witnesses on behalf of the parolee is voluntary and will be at no expense to the Government.

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(5) The opportunity to be represented by a personal representative, including civilian counsel provided at the parolee's own expense or, upon written request of the parolee, detailed military counsel. The parolee has no right to a military attorney of the parolee's choice. Local military counsel, including Reserve judge advocates, may represent the alleged parole violator. Otherwise such counsel will be provided by the Naval Legal Service Office or Marine Corps staff judge advocate office of the command closest to the locale where the hearing is scheduled to convene. The role of the parolee's representative will be limited to the examination of witnesses, presentation of evidence and the offering of a statement on the parolee's behalf with regard to whether parole should be revoked. During the hearing, the parolee's representative will not be permitted to enter objections or challenges. Objections or challenges may be submitted in writing to the hearing officer for attachment to the hearing record. The hearing officer may deny, for good cause, a parolee's choice of a non-attorney representative.

e. Formal rules of evidence (e.g., Military Rules of Evidence) do not apply at the hearing, but the officer presiding at the parole revocation hearing may limit or include/exclude any statement or documentary evidence that is irrelevant or repetitious.

f. The officer conducting the parole revocation hearing shall prepare a summary of proceedings, which will include a summary of the evidence relied upon and the reasons underlying the recommendations regarding revocation of parole. (Note: The reasons for revocation must be consistent with the alleged violation(s) that were contained within the written notification to the parolee.) If the NC&PB finds the reasons provided by the officer who conducted the parole revocation hearing are not consistent with the alleged violations and itself cannot find reasons supported by the facts consistent with the allegations of which the parolee was notified, revocation of parole is inappropriate and should not be ordered. Further proceedings, subsequent to parolee notification, may be appropriate.

g. The standard for determining that a condition of parole has been materially violated is clear and convincing evidence.

h. Parole revocation hearings will be conducted at the times, places and by the agencies or individuals designated by the President, NC&PB, and in accordance with current statutory, regulatory and judicial precedent.

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605. Report of Parole Revocation Hearing Officer. The officer appointed to conduct the parole revocation hearing will prepare a report of proceedings, including a summarized transcript of the parole revocation hearing, all documentary evidence and allied papers considered, and forward it with recommendations concerning revocation of parole to the President, NC&PB. A copy of the report will be provided to the parolee and the parolee's personal representative.

606. NC&PB Options Concerning Continuation of Parole Status. Upon review of the report and recommendation of the officer who conducted the parole revocation hearing, the NC&PB has the following options:

a. Revoke parole. A parolee whose parole is revoked will receive credit for time spent on parole except as follows:

(1) If the parolee has been convicted of a new offense committed after being released on parole, which is punishable by a term of confinement, the NC&PB may order forfeiture of the time from the date of parole release to the date parole is suspended. An actual term of confinement need not have been imposed. If a conviction occurs following a parole revocation hearing, the NC&PB may reconsider the forfeiture of time served on parole or other disposition, as appropriate.

(2) If the NC&PB finds that a parolee intentionally refused or failed to respond to any reasonable request, order, or summons of the NC&PB or any agent thereof, including the offender's supervising U.S. Probation Officer, it may order the forfeiture of credit for time served for the amount of time during which the parolee so refused to respond.

(3) If the NC&PB finds that a parolee was not in material compliance with the conditions of parole, the NC&PB may order the forfeiture of credit for time served during which the parolee was in material noncompliance.

b. Revoke parole and reparole the violator.

c. Reinstate the parolee to the original parole status, to include removal of any detainer placed against the parolee as a result of the alleged violation. Reinstatement of parole following its suspension or following revocation proceedings shall, at the discretion of the NC&PB, be made:

(1) Effective the date of the reinstatement decision; or

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(2) Retroactively effective to any date in the suspension period, provided the NC&PB concludes that the parolee should be given full or partial confinement credit for the period of suspension. A retroactive effective date shall reflect day-for-day credit for that part of the suspension period for which the NC&PB finds confinement credit is justified.

d. Reprimand the parolee in writing. The written reprimand will be placed in the parolee's clemency and parole records.

e. Modify the original conditions of parole.

f. Revoke parole solely upon a determination that a parolee has materially violated a condition of parole by failure to pay a fine or make restitution, only if it finds one of the following conditions exists:

(1) The parolee has willfully refused to pay the fine or make restitution when the parolee has sufficient resources to pay.

(2) The parolee has failed to make a sufficient bona fide effort to obtain employment, borrow money or legally acquire sufficient funds with which to pay the fine or make restitution.

(3) If the parolee cannot pay the fine or make restitution, despite sufficient bona fide efforts to do so, parole may be revoked only if no alternative disposition exists that will adequately serve the need for good order and discipline within the naval service and the correctional treatment of the parolee.

g. Determine credit for service of sentence on parole. An offender whose parole is revoked shall receive credit for time spent on parole except as follows:

(1) If the parolee has been convicted of a new offense committed after being released on parole, which is punishable by a term of confinement, forfeiture of the time from the date of release to the date of suspension or revocation of that parole as a result of that new offense may be ordered by the NC&PB and such forfeited time shall not be credited to service of the sentence. An actual term of confinement need not have been imposed for such conviction if the statute under which the parolee was convicted permits the trial court to impose any term of confinement. If such conviction occurs subsequent to a parole violation hearing, the NC&PB may reconsider the forfeiture of time served on parole or other disposition, as appropriate.

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(2) If the NC&PB finds that a parolee intentionally refused or failed to respond to any reasonable request, order, or summons of the NC&PB or any agent thereof, including the assigned U.S. Probation Officer, or if the NC&PB finds that the parolee was not materially in compliance with the conditions of parole, the NC&PB may order the forfeiture of time during which the parolee so refused or failed to respond or comply.

607. NC&PB Decision and Action Concerning Continuation of Parole Status

a. Upon the majority of the NC&PB finding clear and convincing evidence that the parolee materially violated at least one condition of parole, the NC&PB will decide which one of the options set forth in paragraph 606 is most appropriate.

b. The decision of the NC&PB is final and not subject to appeal.

c. The NC&PB will provide the parolee with a copy of the parole revocation proceedings, including the decision of the NC&PB, and advise the offender of his/her next clemency review eligibility date, and snure known victims are informed, as required by reference (p). If parole is revoked, the notice will state the reasons for revocation and advise the offender of his/her parole eligibility date.

d. Upon NC&PB's decision to revoke parole, the PMU will initiate action to have the parolee returned to military custody, if the parolee is not already in such custody.

(1) If parole is revoked and the parolee is confined in a civilian institution, the NC&PB (PMU) will request CMC(MHC) or CHNAVPERS (PERS-84), as appropriate, to lodge a detainer with civil authorities if such detainer has not already been lodged.

(2) If parole has been revoked and the parolee is not confined in a civilian institution, the PMU will initiate action with CMC(MHC) or CHNAVPERS (PERS-84), as appropriate, to have the parolee returned to the naval brig from which he/she was paroled or such other facility as may be designated by proper authority.

e. Upon NC&PB's decision to reinstate parole or reparole, the PMU will initiate action to notify proper authorities of the decision and have the President, NC&PB, execute a new Certificate of Parole indicating reinstatement on parole with the new full

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term date, if the parolee's full term date was readjusted by the NC&PB because it did not give the parolee full credit for time served for the period of suspension while awaiting the parole revocation hearing.

608. Other Actions Relating to Continuation of Parole Status

a. Personnel records and allied papers of parolees confined in institutions following revocation of parole, or of those whose whereabouts remain unknown for 90 days after suspension of parole, will be retained for Navy offenders by the naval brig from which the offender was paroled and for Marine offenders the naval brig if the Marine has not absconded but by CMC(MHC) if the Marine has absconded.

b. A parolee at large, whose parole has been terminated or whose parole has been suspended or revoked (except those suspended without direction to take the parolee into custody), will be considered the same as an escaped military prisoner whose return to military control is desired. Regulations pertaining to apprehension and return to military control of escaped military prisoners will apply. "Flash" wanted notices will be filed with the FBI (FBI Form I-12).

c. In the absence of substantial mitigating circumstances, the unexpired term of confinement of a parolee convicted of a new offense subsequent to release on parole shall run consecutively to any term of confinement imposed for the new offense.

d. Upon notification that an offender transferred to the FBOP and paroled by the U.S. Parole Commission has absconded on parole, the PMU will ensure that CMC(MHC) or CHNAVPERS (PERS-84), as appropriate, are informed and that proper action has been taken to ensure the offender's return to the FBOP or military custody, and that known victims are informed, as required by reference (p).

APPENDIX A

LIST OF FORMS

This appendix lists the principal forms used in clemency and parole review and the source of supply.

a. The following clemency forms are available through normal supply channels in accordance with NAVSUP 2002:

1. DD 1476 (4-68), Prisoner's Admission Summary Data, S/N 0102-LF-001-4760
2. DD 1477 (2-64), Prisoner's Progress Summary Data, S/N 0102-LF-001-4770
3. DD 1478 (2-64), Prisoner's Summary Continuation Sheet, S/N 0102-LF-001-4780
4. DD 1479 (2-64), Prisoner Assignment and Clemency Board Action, S/N 0102-LF-001-4790
5. NAVSO 5815/2 (Rev. 8-80), Request for Restoration/Clemency, S/N 0104-LF-908-1511
6. NAVSO 5815/4 (5-81), Waiver of Clemency Review, S/N 0104-LF-908-1520

b. FBI I-12 (Rev. 9-77), Wanted-Flash-Cancellation Notice, is available from the FBI, Identification Division, Attn: Recording Section, Department of Justice, Washington, D.C. 20537

c. The following parole forms are stocked by the NC&PB:

1. NAVSO 1640/4 (Rev. 8-77), Certificate of Parole
2. NAVSO 1640/3 (Rev. 5-76), Parole Statement
3. NAVSO 1640/5 (Rev. 1-74), Tender of Employment
4. NAVSO 1640/6 (Rev. 5-76), Notification of Arrival of Parolee
5. NAVSO 1640/7 (Rev. 1-74), Certificate of Release from Parole
6. NAVSO 1640/9 (Rev. 5-81), Parole Violator's Hearing Request

APPENDIX B

FBI REPORTABLE OFFENSES

Only certain offenses under the Uniform Code of Military Justice are reportable offenses. If the offense does not appear on this list, do not report the offense to the FBI.

UCMJ ARTICLE	REPORT AS
90 10 U.S.C. sec. 890	Assault; assault & battery
95 10 U.S.C. sec. 895A	Escape
103A 10 U.S.C. sec. 903A	Looting/pillaging
104 10 U.S.C. sec. 904	Aid the enemy
106,A 10 U.S.C. sec. 906	Apying/espionage
108B 10 U.S.C. sec. 908B	Sell firearms/explosives/incendiaries
110 10 U.S.C. sec. 910	Hazard vessel
111 10 U.S.C. sec. 911	Drunk driving, personal injury
112 10 U.S.C. sec. 912	Use, possession, distribution drugs
116 10 U.S.C. sec. 916	Cause/participate in riot
118 10 U.S.C. sec. 918	Murder
119 10 U.S.C. sec. 919	Voluntary/involuntary manslaughter
120 10 U.S.C. sec. 920	Rape/carnal knowledge
121 10 U.S.C. sec. 921	Larceny/wrongful appropriation >\$100
122 10 U.S.C. sec. 922	Robbery with firearm
123 10 U.S.C. sec. 923	Forgery
124 10 U.S.C. sec. 924	Maiming
125 10 U.S.C. sec. 925	Sodomy by force with a child under 16

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UCMJ ARTICLE

REPORT AS

126	10 U.S.C. sec. 926	Arson
127	10 U.S.C. sec. 927	Extortion
128	10 U.S.C. sec. 928	Assault/battery/aggravated
129	10 U.S.C. sec. 929	Burglary
130	10 U.S.C. sec. 930	Housebreaking
131	10 U.S.C. sec. 931	Perjury
134	10 U.S.C. sec. 934	Enter description if maximum punishment imposable is more than one year, <u>e.g.</u> , assault with intent

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APPENDIX C

GUIDELINES FOR PAROLE DECISION-MAKING

- PART I INSTRUCTIONS
- PART II SALIENT FACTOR SCORE
- PART III OFFENSE SEVERITY RATING
- PART IV DECISION-MAKING MATRIX

PART I

INSTRUCTIONS

The Decision-Making Matrix found in Part IV of this appendix indicates the minimum-maximum total number of months (the customary range of confinement) that should normally be served in confinement (includes pretrial confinement) by an offender before release on parole for each combination of Salient Factor Characteristics (Part II)/Offense Severity rating (Part III) (e.g., 12-16 months) and is intended to serve as a non-binding guideline for decision-making. For the purpose of denying parole, if the Decision-Making Matrix reveals that the offender has served less than the customary number of months for a particular offense(s), further justification for denying parole is not necessary. If, however, an offender is requesting parole and the Decision-Making Matrix indicates that the offender is within or above the customary range of confinement, then the NC&PB must articulate the reasons for denying the offender parole.

Salient Factor Score. The Salient Factor Score is an indicator of an offender's potential for success on parole and is determined by reviewing certain aspects of the offender's character, including any history of prior misconduct. Positive points are assigned for favorable conduct/prior history of conduct. Six areas are considered:

- a. Number of prior convictions (including any nonjudicial punishments)
- b. Prior commitment(s)

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- c. Age at the time of the current offense
- d. Recent commitment-free period
- e. Confinement status at time of current offense
- f. History of substance use/abuse/dependency

Based on these areas of character consideration, a Salient Factor Score of 0 to 10 is assigned to each offender. That Salient Factor Score when combined with a Severity Offense Rating is placed on the Decision-Making Matrix and identifies the customary range of confinement normally to be served prior to an offender being released from confinement on parole. This customary range of confinement is then used by the NC&PB to assist it in determining the adequacy of punishment in light of the confinement served by the offender to date and the potential parole risk for the individual offender.

This "Guidelines for Parole Decision-Making" provides a more rational and less arbitrary basis for parole decision-making by NC&PB; but it is only a tool; it does not mandate absolute minimums or maximums.

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PART II

SALIENT FACTOR SCORE

RANK/NAME/SSN OF OFFENDER

SECTION A - ANALYSIS OF OFFENDER

SALIENT FACTORS..... SCORE

PRIOR CONVICTIONS/ADJUDICATIONS (CIVILIAN, ADULT AND.....
 JUVENILE, AND MILITARY COURTS-MARTIAL AND NONJUDICIAL
 PUNISHMENT) An instance of criminal behavior resulting
 in a judicial determination of guilt or an admission of
 guilt before a judicial or nonjudicial (Article 15, UCMJ)
 body is treated as a conviction, even if a conviction is
 not formally entered.

None 3
 One 2
 Two or three 1
 Four or more 0

PRIOR COMMITMENT(S) OF THIRTY DAYS OR MORE (CIVILIAN OR....
 MILITARY)

None 2
 One or two 1
 Three or more 0

AGE AT COMMENCEMENT OF CURRENT OFFENSE

26 years of age or more*2
 20-25 years of age*1
 19 years of age or less 0

* EXCEPTION: If five or more prior commitments of
 thirty or more days (civilian or military), place
 "x" here _____ and score this item ..= 0

RECENT COMMITMENT FREE PERIOD (THREE YEARS)

No prior commitment of thirty days or more (civilian
 or military) or released from last such commitment at
 least three years prior to the commencement of the
 current offense 1
 Otherwise 0

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CONFINEMENT/ESCAPE/SUSPENDED SENTENCE/UNAUTHORIZED ABSENCE
STATUS

Neither on suspended sentence, confinement, escape or
unauthorized absentee status at the time of the
current offense; nor committed as a suspended
sentence, confinement, or escape status violator this
time 1
Otherwise 0

**ALCOHOL/DRUG DEPENDENCE/SIGNIFICANT ABUSE

No history of alcohol/drug dependence or
significant abuse 1
Otherwise 0

TOTAL: SALIENT FACTOR SCORE

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PART III

OFFENSE SEVERITY RATINGS

	<u>OFFENSES</u>	<u>RATINGS</u>
ART 82	Soliciting or advising another	
	To desert	3, (A,B)
	To mutiny	5, (B)
	To commit an act of	
	misbehavior before the enemy	5, (B)
	To commit an act of sedition	5, (B)
ART 83	Fraudulent enlistment/separation	3
ART 84	Effecting a fraud enlistment	3
ART 85	Desertion	
	w/intent to avoid hazardous	
	duty or to shirk important	
	service	4
	terminated by apprehension	3
	other cases	2
ART 86	Absence	
	failure to go to place of duty	1
	absence from unit 30 days	1
	30 days and terminated by	
	apprehension	2
ART 87	Missing movement	
	through design	2
	through neglect	1
ART 88	Contempt toward officials	2
ART 89	Disrespect toward superior officer	1
ART 90	Assault on superior officer in	
	execution of his office	5, (B)
	willful disobedience of superior	
	officer	3, (B)
ART 91	Assault a warrant officer	3, (B)
	Assault an NCO	2, (B)
	Willful disob a warrant officer	2, (B)
	Willful disob an NCO	1, (B)
	Disrespect to warrant officer	2, (B)
	Disrespect to NCO	1, (B)

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ART 92	Violate or fail to obey a lawful general order or regulation any other order dereliction of duty	2 1 1
ART 93	Cruelty or maltreatment of subordinates	3
ART 94	Mutiny, sedition	8
ART 95	Resisting apprehension Breaking arrest Escape from confinement	2 1 3
ART 96	Releasing prisoner w/o proper authority Suffering a prisoner to escape through design through neglect	3 3 1
ART 97	Unlawful detention	4
ART 98	Unnecessary delay in disposing of cases Knowingly, intentionally failing to comply	1 3
ART 99	Misbehavior before the enemy	8
ART 100	Subordinate compelling surrender	8
ART 101	Improper use of countersign	8
ART 102	Knowingly forcing a safeguard	8
ART 103	Captured or abandoned property; failure to secure value \$100.00 or less value \$100.00 or more looting, pillaging	1 3 7
ART 104	Aiding the enemy	8
ART 105	Misconduct as a prisoner	7
ART 106	Spying/espionage	8

ART 107	False official statement	3
ART 108	Military property; loss, damage, destruction, disposition	
	Selling, otherwise disposing:	
	of value of \$2,000.00 or less	1
	of value of \$2,000.00 or more	4
	any firearm, explosive, or incendiary device	4
	Damaging, destroying, losing or suffering to be lost, damaged, destroyed, sold, or wrongfully disposed:	
	Through neglect	
	of value of \$2,000.00 or less	1
	more than \$2,000.00	2
	Willfully	
	of value of \$2,000.00 or less	1
	more than \$2,000.00 or more	4
	firearms, explosive or incendiary device	4
ART 109	Wasting, spoiling, damaging, etc. property other than mil prp of US	
	of value of \$2,000.00 or less	1
	of value of \$2,000.00 or more	3
ART 110	Hazarding any vessel of armed forces willfully or wrongfully negligently	8 4
ART 111	DUI/Reckless operation - any vehicle personal injury otherwise	2 1
ART 112	Drunk on duty	1
ART 112a	Drugs, wrongful use, possession, manufacture, or introduction of amphetamine, cocaine, heroin, lysergic acid diethylamide, marijuana (except possession of less than 30 grams or use of marijuana), methamphetamine, opium, phencyclidine, secobarbital, and Schedule I, II, and III controlled substances	3

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	Drugs, wrongful possession of less than 30 grams or use of marijuana, wrongful use, possession, manufacture, or introduction of phenobarbital and Schedule IV and V controlled substances	1
ART 112a	Drugs, wrongful distribution of, or, with intent to distribute, wrongful possession, manufacture, or introduction of amphetamine, cocaine, heroin, lysergic acid diethylamide, marijuana, methamphetamine, opium, phencyclidine, secobarbital, and Schedule I, II and III controlled substances	5
ART 112a	Drugs, wrongful distribution of, or, with intent to distribute, wrongful possession, manufacture, or introduction of phenobarbital and Schedule IV and V controlled substances	4
	When any offense described in above is committed while the accused is: on duty as a sentinel or lookout; on board a vessel or aircraft used by or under the control of the armed forces; in or at a missile launch facility used by or under the control of the armed forces; in a hostile fire pay zone; or in time of war, increase the offense category by one category. Paraphenalia possession	1
ART 113	Misbehavior of sent, or lookout	
	in time of war	8
	hostile fire area	5
	all other places	2
ART 114	Dueling	1
ART 115	Malingering	1, (3 in time of war)
	Intentional self-inflicted injury	
	in time of war	5
	other	3

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ART 116	Riot	5
	Breach of Peace	1
ART 117	Provoking words	1
ART 118	Murder	8
ART 119	Voluntary manslaughter	7
	Involuntary manslaughter	4
ART 120	Rape	
	if preconsent relationship	6
	other	7
	Carnal knowledge	
	at least 14 in age diff is 4 yrs	
	with consent	1
	12 years	7
	all others	4
ART 121	Larceny	
	of value of \$0-2000	1
	of value of \$2,000-40,000 or AC, vessel, vehicle	3
	of value of \$40,000-200,000	4
	of value of \$200,000-1,000,000	5
	Wrongful appropriation	
	all cases except motor vehicle	1
	motor vehicle, aircraft, vessel	2
ART 122	Robbery	
	with firearm	6
	without firearm	5
ART 123	Forgery	
	if stolen checks or cards	2
	of value of \$0-2000	1
	of value of \$2,000-40,000	3
	of value of \$40,000-200,000	4
	of value of \$200,000-1,000,000	5
	of value of \$1,000,000 or more	6
ART 123a	Checks insufficient funds, intent to deceive	
	\$100.00 or less	1
	more than \$100.00	2
ART 124	Maiming	4

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ART 125	Sodomy	
	force w/o consent	6
	w/child under 16 yrs	7
	all other	4
ART 126	Arson	
	with injury	7
	aggravated	6
	simple - property	
	of value of \$100.00 or less	2
	of value of more than \$100.00	4
ART 127	Extortion	5
ART 128	Assault	
	during commission of another offense	
	if serious injury results (or intended)	7
	if bodily injury (or weapon fired)	6
	otherwise	5
	Assault	
	if serious injury	7
	if bodily injury (or weapon)	5
	otherwise	2
ART 134	Burning w/intent to defraud	4
	Worthless check, NSF	1
	Escape from corr custody	2
	Breach of restraint	1
	Cohabitation, wrongful	1
	Criminal libel	2
	Debt, dishonorable failure to pay	1
	Disloyal statement	4
	Disorderly - all	1
	Drinking liquor w/prisoner	1
	Drunk, Drunk-disorderly	1
	False or unauthorized pass, permit,	
	ID card making, altering, selling	2
	Possessing w/intent to defraud or deceive	3
	False pretenses, obtaining services	
	of value of \$100.00 or less	1
	of value of more than \$100.00	2
	False swearing	2
	Firearms, discharging through negligence	1
	Wrongfully-willfully under circ. as to	
	endanger life	2
	Fleeing scene of accident	1

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Gambling by NCO or PO w/person of lower grade	1
Homicide, negligent	4
Impersonating an officer, WO, NCO, PO, etc. w/intent to defraud	3
all other cases	1
Indecent acts w/child under 16 yrs	4
12 yrs	7
Indecent exposure	1
Indecent, insulting or obscene language-all cases	1
Indecent or lewd acts w/another	4
Jumping from a vessel into water	1
Kidnapping for ransom	8
for extortion	7
otherwise	7
Mail matter, theft, etc.	3
Mail matter, obscenity	1
Misprison of a felony	2
Committing a nuisance	1
Obstruction of justice	4
Pandering	3
Prostitution	2
Violation of parole	1
Perjury-statutory but not less than category 3	**
Perjury-subordination	**
Prisoner, allowing to do unauthorized act	1
Public record, altering, concealing, etc.	2

PART IV

DECISION-MAKING MATRIX

(Identifies the customary range of confinement to be serve (including pretrial confinement) by the offender prior to release on parole)

OFFENSE SEVERITY RATING	SALIENT FACTOR SCORE			
	Very Good	Good	Fair	Poor
	(10-8)	(7-6)	(5-4)	(3-0)
One	<-4 Mos	<-8 Mos	8-12 Mos	12-16 Mos
Two	<-6 Mos	<-10 Mos	12-16 Mos	16-22 Mos
Three	<-10 Mos	12-16 Mos	18-24 Mos	24-32 Mos
Four	12-18 Mos	20-26 Mos	26-34 Mos	34-44 Mos
Five	24-36 Mos	36-48 Mos	48-60 Mos	60-72 Mos
Six	40-52 Mos	52-64 Mos	64-78 Mos	78-100 Mos
Seven	52-80 Mos	64-92 Mos	78-110 Mos	100-148 Mos
Eight*	100+ Mos	120+ Mos	150+ Mos	180+ Mos

- * For Offense Severity Rating Eight, no upper limits are specified due to the extreme variability of the cases within this rating. For decisions exceeding the lower limit of the applicable guideline by **more than 48 months**, NC&PB will specify the pertinent aggravating case factors (e.g., that a homicide was premeditated or committed during the course of another felony; or that extreme cruelty or brutality was demonstrated) upon which it relied in reaching its decision, which may include the absence of any factors mitigating the offense.

APPENDIX D

SUMMARY OF SIGNIFICANT REVISIONS

This revision reflects the following changes to SECNAVINST 5815.3G:

a. Reorganization of the content to reflect a more logical presentation.

b. Provides a more extensive definition of terms.

c. Synopsizes the statutory, regulatory and other legal provisions upon which the NC&PB makes its recommendations and decisions.

d. Creates two categories of selected offenders:

(1) Offenders entitled to Mandatory Clemency Review: those with approved unsuspended sentences to confinement for 12 months or more; and

(2) Offenders who must Request Clemency Review: those with approved unsuspended sentences that include a punitive separation and less than 12 months confinement.

e. Provides more detailed description of the policy, objectives and functions of the NC&PB in carrying out its mission.

f. Establishes new procedures and time schedules to implement the new categories of selected offenders entitled to clemency review.

g. Provides more detailed description of the procedures for handling and deciding requests for parole, including a non-inclusive listing of reasons for denial.

h. Establishes procedures for determining eligible offenders and tracking progress of the case to ensure NC&PB's exercise of jurisdiction is not denied or exercised as expeditiously as possible.

i. Establishes procedures for ensuring the commands and offenders are notified of NC&PB decisions.

j. Specifies a non-inclusive list of conditions of parole.

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k. Changes the policy requiring the offender to waive clemency review when appellate review is waived; a specific written waiver of clemency review is now required.

l. Provides a clear and more precise means of identifying the offender's clemency review and parole eligibility dates and schedule for submission of documents and recommendations required for timely review by NC&PB.

m. Increases the range within which the NC&PB may grant parole from six to nine months to give the NC&PB more opportunities to grant parole while exacting sufficient punishment, especially on shorter sentences. The NC&PB monitors offenders awaiting parole release so the increased range will not affect the requirement for continued good performance until release.

n. Reduces the minimum confinement for parole review from "more than a year" to "12 months or more" per reference (a).

o. Ensures that offenders destined for the FBOP have the opportunity to appear before an agent of the NC&PB and present evidence on their own behalf before they are transferred. Also ensures that the NC&PB has timely information to evaluate offenders' performance in naval brig.

p. Establishes rules to determine the NC&PB clemency review date in every case to facilitate docketing each case as it is received and to ensure that all cases are reviewed annually, on time.

q. Clarifies effects of waiving initial clemency review.

r. Adds requirements for identification of and notification to known victims of the scheduling of a clemency review or parole hearing for an offender; the escape, work release, furlough, or any other form of release from custody of an offender; the death of an offender (if the offender dies while in custody); and general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each; as these requirements are applicable to NC&PB and other users of this instruction, in order to comply with the Victims' Rights and Restitution Act of 1990, and with the Navy instructions which will implement it.

s. Reassigns responsibility for obtaining information on offenders transferred to the FBOP to the NC&PB instead of CMC or CHNAVPERS.

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t. Provides parole eligibility for offenders who did not have a punitive separation adjudged but have an approved administrative discharge or are retired.

u. Reschedules all clemency reviews of offenders requesting parole, except the initial parole request, to coincide with the anniversary of the parole hearing date; and requires a clemency review during the parole hearing in order to insure annual clemency review and decrease the number of times NC&PB must review a case because it has been recently reviewed either for clemency or parole.

v. Makes the parole provisions of this instruction applicable to naval service offenders confined in FBOP when/if the term of the U.S. Parole Commission expires, no legislative change is made authorizing SECNAV parole authority over those offenders and no memorandum of understanding is effectuated to clarify authority.

w. Authorizes the Director, NCPB, to grant waivers to the grade requirements for membership on the NC&PB. In the past seven years, there have been two waivers requested and granted by SECNAV to permit an exceptionally qualified LCDR psychologist/psychiatrist to serve on NC&PB.

x. Clarifies the handling of national security cases.

y. Formalizes current practices of the NC&PB with regard to:

(1) Advising federal, state or local, as appropriate, law enforcement authorities when the NC&PB concludes from the records that a potential violation of the law exists;

(2) Advising U.S. Immigration and Naturalization Service concerning non-U.S. citizen naval offenders who NC&PB determines fall within the provisions of 8 U.S.C. section 1251;

(3) Ensuring offenders who are diagnosed as dependent on drugs or alcohol are afforded the opportunity for inpatient treatment at a Veterans Administration Medical Center, or other equivalent treatment, prior to discharge per 10 U.S.C. section 1090.

z. Publishes the "Guidelines for Parole Decision-Making" used by the NC&PB.

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aa. Changes the requirements for psychiatric/psychological evaluations.

bb. Changes the qualifications of the individual conducting the psychiatric/psychological evaluations from psychiatrist or psychologist to psychiatrist, clinical psychologist or clinical social worker.

cc. Eliminates a requirement for psychiatric/psychological evaluations on offenders whose approved unsuspended sentence includes less than 12 months confinement.

dd. Requires a psychiatric/psychological evaluation only for offenders who have been determined substance dependent by a substance abuse coordinator and offenders who have been convicted of sex offenses or other violent offenders.

ee. Defines more clearly the types of cases over which NC&PB has and does not have jurisdiction.

ff. Clarifies the handling of written requests for disclosure of information/records as being controlled by Freedom of Information Act (FOIA) and Privacy Act (PA).